IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971
No. ----

Dr. Sid E. Williams, Dr. Basil C. Hall, The Chiropractic Association of Ohio, by its President, Dr. David R. Hughes, and as an individual, Dr. Frank J. Ream, Dr. Robert F. Shirk, Dr. Gary Stocker, Dr. Albert M. Cochran, Dr. Herbert R. Reaver, Dr. Donald B. Lash, Dr. Carson S. O'Dell, Dr. Wilbur F. Stiers, Dr. William E. Black, Dr. Wayne A. Bryan, Dr. Russell E. Reaver, Dr. Ernest A. Novak, Dr. Regina E. Lorr, Dr. Arthur E. Proffit, Dr. Harold G. Rinehart, Dr. J. M. Saxton, Dr. John F. Grone, Dr. Ernest P. Panza, Dr. R. V. Zimmer, Dr. Tom Morgan, Dr. George Chromiak, Dr. Norman R. Abrams, Dr. Judson P. Pitts, Dr. Robert E. Allison, Dr. Donald G. Ward, and all chiropractors, naprapaths, naturopaths and drugless healers similarly situated, and

The Patients' Association for Chiropractic Education, by Dr. Donald G. Ward, President, and also in behalf of chiropractic patients, Marian Etling, Evelyn Wharton, Mary Horn, Twila Colopy, Richard Colopy, Russell E. Adams, Frances Haldman, Wilma Bowman, Betty Taylor, Dixie Esterline, Anna Owens, Vaughan Soliday, Mary Soliday, Faye Nordyke, Elaine Stoneburner, Thomas A. Dilgard, Dora E. Hughes, James R. Ryis, Louella Ryers, Jeff Ryers, Helen Ridenaur, Mrs. Chester Long, Mrs. Perry Feightner, Art Gates, Joyce Reamsnider, Richard Reamsnider, Albert S. Smith, Larry Smith, Clifford Gruvner, Lois Daniels, Duright Daniels, Dolly Hardurck, Gloria J. Walker, Russell Indorf, Opal Indorf, Ula W. Leedy, Bernard Freeman, Velma Burgett, Jan Hendershott, Marian D. Hughut, Bruce A. Mullet, Mary McFarland, Adrian W. Tolten, Eva Smith, Nirma Stattler, Albert Hostettler, Bernice Hostettler, John R. Baker, Doris I. Ball, Laurence P. Rochhim, Genevieve Kochkeiser, R. Sawdey, Raymond F. Sawdey, Richard L. Derr, Dorothy M. Sutt, Robert L. Charley, Carol J. Charley, Alma M. Weirntz, Clarence Weirntz, Dorothy M. Gubernath, Albert C. Gubernath, James E. Haman, Beatrice Haman, Bessie Kitchen, Bessie Marble, Mary E. Smith, Bonnie J. Shuetz, Robert H. Shuetz, Evelyn R. Jones, E. E. Lyons, Ida L. Dickerson, Mrs. Robert L. Woodring, R. M. Motz, Beth A. Nyhart, Frances Massey, Ada E. Massey, Helen Wachtel, Lucelle Taylor, Lala Griffith, Richard L. Beal, Anna Gruner, Mrs. Charles Ink, Preston Williams, Margaret Stoneburner, L. E. Metcalf, Bernice Metcalf, Georgia Ross, John Becker, Mrs. John Becker, Dorothy Simmons, Ruth Swank, Glenn

Gatton, John E. Hall, Fred Schonauer, Diane Moskey, Edith English, Betty Lou Dailey, Eleanor J. Weaver, Mary Van Horn, Robert Van Horn, Mary B. Etling, James Bucher, Mina Leyda, Wilbur Leyda, Becky Garnes, James M. Walters, Opal Walters, Imogene Walters, Richard Pearce, Mary B. Forbes, Ned E. Staats, B. J. Wampfler, Myron Norris, Quentin H. English, Jessie Butler, Dat Holbrook, Woneta Cheuvront, Mildred Sidle, Culver Sidle, R. A. Laser, William R. Livingston, Ralph Weary, James R. Walters, Dan Randall, Nancy R. Brown, Robert E. Hamilton, Mary Baylar, Lucille Wilcox, Ester Heffelfinger, Alonzo Heffelfinger, Alice Hummel, Leonard Smith, Ruth Lefever, Roger Echelburger, Ray R. Griffith, Marila Gardner, Howard E. Gardner, Ada Cooley, Larry Conrad, John Burkepile, Lenora G. Berry, Kay Berry, Arthur Gee, Kay McKown, Ruth Oney, Lee Withrou, Ralph J. Miller, Gene Starner, Dottie McAvene, Catherice M. Flowers, Mrs. John Barnes, Chester Long, Bernard Sprang, Everett Sprang, Clinton F. Shaffer, Sidney Purdy, Georgia Purdy, Joan Bucher, Alton J. Bucher, Norman L. Sprang, Karl L. Miller, Jean Zeliner, Ray Banbury, Pearl Banbury, Ruth Metcalf, Richard N. Clark, Blanche McIntire, Fordoris Kemp, Blaine Workman, Don Kopp, Gene Cehrs, A. F. Chers, James W. Dennis, Robert S. Stienmetz, Oliver Pilgrim, Hattie F. Owens, Richard Laughrey, Clara Schrank, Archie Garrey, Ruth M. Kisling, Majora Casteel, Pearl Coleman, Lille Courtwright, Helen Bright, Miriam Glasgo, Lila Spotts, Ernest S. Spoots, J. L. Heatherwood, Mildred Long, Terry B. Miller, Thos. Wise, Dorothy E. Kelser, Jenny Steinmetz, Bernard F. Shrimplin, Bernice Leech, William Leech, Atlee Wachtel, Myrtle Lowe, Al Regne, Virginia Banbury, Bradley D. Walker, D. L. Walker, Mary Walker, Steve Walker, Helen Mosier, Helen Adams, Doris Keener, Esther Ewing, Viola Myers, Clarence Heichel, Mrs. Sidney Fulk, Maria Devenburger, Effie Dreyer, Carl Dreyer, Donna Dreyer, N. Templeton, Margaret McGraw, Janis Emery, Irene Peters, Fred Peters, Ruth M. Ludwig, Clarence F. Ludwig, Virgil Kaufman, Sarah Wiltrout, V. McConnell, Gaylord F. Shine, Richard Rieser, Elizabeth Ramsey, Glenn Mashu, Rosemary Root, Barbara J. Mize, Mrs. H. P. Faust, Luther Davidson, Marcel Davidson, Maxine Swinehart, Jean Ramsey, Jean Morr, O. M. Lechiria, Don Reynolds, Beverly Gray, Levi L. Gray, Margie Troxel, Margaret N. Fair, Elden L. Fair, Mike Flanagan, Donna Coffman, Nancy Coffman, Elmo E. Fruth, Connie L. Miller, Roger E. Miller, Geneva B. Chapman, Frank B. Chapman, Charles L. Buhshire, Wanda Howard, Harold Howard, Florence Miller, Genevieve Robinson, Mrs. George Benner, George E. Benner, Paula Monroe, Jackie Wertman, Robert Wertman, Blanche Forsythe, C. W. Brownfield, Orland Emery, Marjorie Bone, Doyle Bone, Morrell Dunham, Jo Ann Dunham, June Reuer, Ronald Zappone, Mrs. Jim

Spoeir, Nola McElhaney, Hazel Cochran, Garneta Mumaw, Clifford J. Mumaw, Bradley C. Cullen, Lucy E. Yergin, Hazel Flint, Marie Jordan, Mary Haley, Beulah Barr, Thelma J. Rapp, Mary Jean Morris, Ruth Ann Huff, Jean B. McAullaufe, Jack Dovenberger, Patti McCullough, Nancy Cronebach, Ella Wayne S. Ward, Genevieve Robinson, Mrs. D. O. Ward, Dorothy M. Stockmaster, Marilyn J. Tenpenny, Alan G. Tenpenny, Martin Fisk, Harriet A. Krause, Joyce Ambrose, Steve Ambrose, James P. Clarkson, Paul E. Sloan, Betty M. Rogers, Melvin Stepp, Mary Hazlett, Kathy Hazlett, Richard Hazlett, Elizabeth Tilton, Oliver Tilton, Vivian Schoonover, Edward Schoonover, Robert Tenpenny, E. M. Shuhling, John Wallery, Janice M. Wallace, John A. Wallace, Jr., Frank McFadden, Sylvia McFadden, Robert Heimberger, John R. Lutz, Nancy Lutz, Carolyn Heimberger, Mrs. Edwin Applegate, Bobby Bailey, Lloyd Bailey, Kenneth Bailey, Robert C. Bates, Miriam Bates, Fren M. Buzard, Marge Tenpenny, Richard D. Buzard, Wesley L. Garn, Sally Lou Schoonover, Ida May Shultz, Yvonne Harlan, William Goard, Stanley Holmes, Ruth Holmes, H. F. Holmes, Rosella Rose, Mary J. Garrison, Suzanne Smith, Ada L. Shopbell, Alice Heltzel, Barbara Warrick, Adaline Owens, Maxine Gongwer, Patricia A. Lindecamp, Roger E. Elson, Mabel Cooper, Ronald E. Crawford, Harold Van Houten, Ralph Van Gilder, Willis Shouse, Martha J. Calhoun, Clara Bright, Paul T. Sparks, Mrs. James McCormack, Maxine Shopbell, Evelyn Jason, Martin Klishinski, Lois Ernsthauser, Betty Carson, Paul Owen, Mrs. Merle Fisk, I. Potter, Shirley Riling, Walter Swineford, Leroy Watson, H. C. Fulk, Madge Sheeks, Orman O. Sheeks, Norville Reeves, Roxie Kauffman, Mrs. Donald Mowrey, Don Mowrey, Nellie E. Kitts, Anna Taylor, Loeota Osbun, Sandy Osbun, Earl De Haven, Betty De Haven, Leona Cook, Mrs. Calvin Bartley, Mrs. Raymond Wiley, Mrs. Martin Kleshinski, Mrs. Karl R. Green, Karl R. Green, Dale Gardner, Carl Dreyer, Jr., Naomi Swineford, Irene Lawrence, E. Colbert, Mrs. Earl Paramore, Mrs. Evelyn Goard, Anna Taylor, Genevieve Watson, Mrs. Roy McElhaney, Ruppert Rudd, Genny Heath, Orville P. Lash, Paul Heath, Mrs. Terry Temple, Billie Anderson, Gary R. Hogue, Freda Bishop, Ruby Wallace, Sanford Wallace, Bill Chamberlain, Maxine Gibson, G. Duville, Glenn Will, Mrs. Glenn Will, Mrs. John Taylor, Virginia Tucker, Josephine Bachman, Jean L. Hogue, Leon S. Laser, Larry J. Bunker, Merlin King, Esther M. Powell, Eva Viola Powell, Larry L. Barnthouse, Marilyn Sanchez, Sandio Carte, Mary Gillespie, William C. Disbro, Mrs. Lester Poland, Helen Heckman, Virginia O'Brien, Clyde Bell, Lloyd Gram, Ruth Gram, Pat Downs, Raymond Cornell, Alta Martin, Pat Schroeder, William Viars, Linnie Lio, Wanda Briegel, Lewis Price, Marseena Long, Wayne G. Hartschuh, Glen Eggerman, Harold Davis, Norphia Williams, Blanche Till, Joan

Studer, Cecil E. Osborne, Lester A. Walter, Mrs. Rodney E. Albright, Mrs. Opal Stirzinger, G. M. Palmer, Audry Warner, Gainet Hoover, Kenneth W. Snyder, Mrs. Wayne E. Strine, W. J. Huston, H. J. Reffel, Bud Motter, Betty Reith, Catherine Baker, Marie Schwemley, Charles Schwemley, Patricia A. Hiltbrunner, James L. Brown, Donald Hutchison, D. R. Dean, John L. Pratt, Mary Kranz, Triva Le Clair, Art De Clair, Edith Strimple, Sterling Dingus, Gladys M. Walter, Vernell Laurence, Kenneth E. Hess, Elsie M. Laser, Mary Payne, Cecil L. Steiner, Pauline Steiner, H. Marble, Ruth Deishimer, Louise De Vito, Pete Schultus, Jr., Betty C. Tanner, Nadine Barnthouse, Olga A. Sandor, Jim Jackson, Marie Butler, Kathy Butler, Doris Hall, Lucille Greathouse, Cornelius Studer, Mae Schaeffer, Donald Schaeffer, Edith Culbertson, William Love, Richard F. Holmes, William Furr, Douglas Carter, Treva Stamper, Hazel Eckert, Oliver Eckert, Susan Hunter, Helen Albright, Ethel Thomas, W. E. Carolhurst, Mrs. John A. Cole, Mrs. Everett Moore, Dali E. Mackey, Joseph G. Alexander, Barbara Lash, Mary Brindle, Date Tumey, Rockford Gibson, Naomi Dapper, Nini Baker, Mrs. Glenn Haverfield, Mrs. Harman Sharrock, Mrs. Harry De Wolf, Mrs. Arthur Marggraff, Maxine Linger, Ray Linger, Betty Hoover, Eugene Shade, David A. Smith, Madeline McEine, Cindy Jones, Earl R. Arnold, G. A. Stilzer, Mrs. Charles Heskett, Charles Heskett, Dorothy M. Gubernath, Albert C. Gubernath, James E. Haman, Dean Schickedantz, A. Adams, Mrs. Samuel B. Mew, Laura Lee Brodhead, William B. Brodhead, Gene Murray, Dorothy Kinsey, Mable Davis, Levi Egley, Marilyn Friedman, Jennie Goff, Mrs. Carl Kissel, Mrs. Mary Kleman, Harry L. DeWolf, J. L. Friedman, Ellen Shepherd, Paul S. Lantz, Earl Albin, Barbara Kale, Zula Belle Ross, Beula Plice, Marian Franklin, Jerry Kragh, Kristen Marble, Dessie Simmermacher, Cleo Mellick, Ray Barker, Mary J. Barker, Robert E. Seaman, Edna Hainer, Dorothy Hanlor, Freda Enoch, Martha Paraski, Mary Armstrong, B. P. Lash, Elsie Ross, Gladys Fard, Dean Gallaway, Elthel Downs, Vergil Downs, Ruth Ann Goff, Vere Stevenson, Floyd Frazer, Robert R. Wirth, Lewis Marshall, Ambrose G. Spangler, Paul Stoodt, Miriam I. Stoodt, Frank E. Burwell, Mrs. Warren L. Smith, Warren L. Smith, Harriet M. Elkins, Bughton Kayser, Helen Kayser, Dan Kayser, Mark Hogue, Virgil Schroeder, Martha Souder, Mildred Kinney, Larry Bunker, Nellie Sunners, Earl Sondu, Earl D. Washburn, Betty Thompson, Huldah Seitz, Don Appleman, Lottie Price, Mrs. Wilbert Appleman, Mae Hawkins, Jaunita Ramsey, James A. Waine, Woodrow Willey, Mary Arnold, Elvira Brown, Pat Brown, Vicki Brown, Barb Justice, Linda Conley, Jay Walker, Ruth Walker, Mrs. Jos DeVito, Betty J. McKahan, Morton W. Thompson, Betty Greenwalt, Glenn A. Greenwalt, Beverly J. Biglin, Pauline Guerney, William Hayes, Leroy Heathcock, Kenneth

Ernst, Ruth Schroeder, John Hopkins, Wayne Guerney, Suzanne Downs, John Guerney, R. Harold Mack, Margaret L. Mann, James Montgomery, D. D. Spehan, C. S. Harker, Dean Arnold, Paul Boubary, B. W. Rhodes, William Hunter, Edward Bish, Jean Seitz, Rose M. Scheffel, Ronetta P. Scheffel, Al Kempf, Earl S. Friewider, Sara L. Kranz, Michale A. Ramsey, Iris Zumbrunn, Annabel E. Croll, Eileen Huggins, Dick Frechl, Doris Billhumer, Howard Ross, Emma M. Urich, Mary Jane Orwider, Bertha G. Fahl, Martha J. Clark, Myrtle McKenzie, Eugene Marshall, Norma Young, P. Underwood, Paul E. Whipp, Harry J. Albaugh, Angelo Mott, Josephine Mott, Vincent L. Taylor, Ruth Strohminger, Walter Strohminger, Edna Kreinbrink, Helen Kreinbrink, Isabelle Cobb, Peggy Hutson, Laurence Callinger, Raymond E. Downs, Charles E. Till, James R. Crase, Ruth Cotter, Eilien E. Ghent, Chester E. Jones, Alma Franklin, Maril Gwirtz, Leonia Barnhill, Pinna Osborne, Marvin G. Tobin, Clyde Cheek, William Irvin, Mary Louise Counnast, Richard R. Crawford, and all persons similarly situated,

Petitioners

v.

Dr. Walter C. Bornemeier, as president, Dr. Ernest B. Howard, as Executive Vice President, Dr. C. F. Hoffman, as Secretary-Treasurer, of the American Medical Association, a corporation, and the American Medical Association; and

Dr. Ralph K. Ramsayer, Dr. Henry A. Crawford, Dr. Peter Lancione, Dr. John D. Brumbaugh, Dr. Frederick T. Merchant, Dr. Anthony Ruppersberg, Dr. Henry G. Cramblett, Dr. James O. Watson, serving as the Ohio State Medical Board, and the Ohio State Medical Board; and

Dr. Richard L. Fulton, President, Dr. James L. Henry, Treasurer, and as such serving the Ohio State Medical Association, and the Ohio State Medical Association,

Respondents

Petition For a Writ of Certiorari To the United States Court of Appeals For the Sixth Circuit

---

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Involved	1, 2, 3
Statutory Provisions Involved	3
Statement of Case	3
The Facts	5
Reasons Why the Writ Should be Granted	11
Abstention	11
Decisions Relied on by the Court Below	19
Sherman Act Violation	47
Violations of Article IV, section 2, and Amendment XIV of the Constitution	52
Pecuniary Interest in Conviction	55
Conclusion: The Writ of Certiorari Should be Granted	58
Certificate of Service	59

APPENDIX

Order of District Court and Opinion	61
Previous Order of Same Judge Granting Petition for Three Judge Court	69
Order Dismissing Appeal	71
Order Denying Rehearing	73
Constitution of United States	74
United States Code	75
Order Extending Time to File Petition for Writ of Certiorari	82

CASES CITED

	Page
Aitchison v. State, 204 Md. 538	30
American Medical Association v. United States, 317 U.S. 519	52
American Medical Association v. United States, 130 F. 2d 233	17
Anderson v. Richardson, 454 F. 2d 596	19
Benton v. Maryland, 385 U.S. 784	41
Berry v. Summers, 76 Idaho 446	26
Bloom v. Illinois, 391 U.S. 194	40
Blumenthal v. Bd. of Medical Examiners, 57 Cal. 2d 228	50
Bonham's Case, 8 Coke 118a	57
California Water Service Co. v. Redding, 304 U.S. 252	43
Chenoweth v. State Bd. Medical Examiners, 37 Colo. 74	27
Clay v. Sun Ins. Office, 363 U.S. 201	13
Cohens v. Virginia, 19 U.S. 264	11
Commonwealth v. Zimmerman, 221 Mass. 184	35
Collins v. Texas, 223 U.S. 288	19, 20, 21, 22, 23, 36, 44
Crandall v. Nevada, 6 Wall. 35	53
Crane v. Johnson, 242 U.S. 339	19
D'Amico v. Bd. of Medical Examiners, 6 Cal. App. 3d 716	22
Day v. Savage, 80 Eng. Reprint, 235	57
Dent v. West Virginia, 129 U.S. 114	22
Duncan v. Louisiana, 391 U.S. 947	40
Edwards v. California, 314 U.S. 160	16, 51

Page

England v. Louisiana Medical Examiners, 246 F. Supp. 993 ..... 18, 19, 23

England v. Louisiana Medical Examiners, 263 F. 2d 661 ..... 19, 23, 24, 25, 26, 44

England v. Louisiana Medical Examiners, 373 U.S. 411 ..... 4, 12

Ex parte Poresky, 290 U.S. 160 ..... 19, 45

Gerber, Matter of, 57 Cal. App. 141 32

Gibbons v. Ogden, 9 Wheat. 1 ..... 51, 52

Goldberg v. Kelly, 397 U.S. 254 19

Government Employees v. Windsor, 353 U.S. 364 13

Hall et al. v. Ohio State Medical Board (Civil Action 69280) 3

Hayden v. State, 81 Miss. 291 22

Heaney v. Allen, 425 F. 2d 869 ..... 19, 22, 36, 42, 43, 44

Hulett v. Julian, 250 F. Supp. 208 56

Hesketh v. Braddock, 3 Burr. 1847 57

Hitchcock v. Collenberg, 140 F. Supp. 894 ..... 19, 32, 33 35, 45

Hurtado v. California, 110 U.S. 516 8

Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713 4

Industrial Association v. United States, 268 U.S. 64 ... 17

Jordan v. Tashiro, 278 U.S. 123 52

King v. Smith, 392 U.S. 309 4

London v. Wood, 12 Mod. 669 57

Lynch v. Household Finance Corp., 405 U.S. 538 15

McNaughton v. Johnson, 242 U.S. 344 ..... 19, 36

CASES CITED—(*Continued*)

	Page
Meyer v. Nebraska, 262 U.S. 390	26, 27
Meyers v. Shields, 61 F. 713	3, 56
Mitchum v. Foster, 405 U.S. —.	15, 17
New Jersey Chiropractic Ass'n v. Bd. Medical Examiners, 79 F. Supp. 327	19, 38, 39, 40, 41
North Carolina v. Pearse, 395 U.S. 711	41
Oosterveen v. Bd. of Medical Examiners, 246 P. 2d 136.	31
Passenger Cases, 7 How. 238	53
People v. Fowler, 32 Cal. App. Supp. 737	35
People v. Love, 289 Ill. 304	28, 29
People v. Mangiagli, 218 P. 2d 1025	35
Paul v. Virginia, 8 Wall. 168	51, 55
Pratt v. British Medical Association, 1 K.B. 224	17
Railroad Commission v. Pullman, 312 U.S. 496	11, 12
State Board of Medical Examiners v. Grossman, 134 N.J.L. 401	39, 40
State v. Hopkins, 54 Mont. 52	35
State v. Barnes, 119 S.C. 213	34
State v. Gallagher, 101 Ark. 593	35
State v. Gravett, 65 Ohio St. 289	5, 22, 27, 47
State v. Johnson, 84 Kan. 411	35
State v. Liffring, 61 Ohio St. 289	22
State v. Smith, 81 Idaho 103	26, 28
Slaughterhouse Cases, 16 Wall. 75	10, 30, 54
Smith v. Pearson, 294 F. Supp. 611	12
Swift v. Wickam, 382 U.S. 111	11

CASES CITED—*(Continued)*

Page

Toomer v. Witsell, 334 U.S. 385 54

Tumey v. Ohio, 273 U.S. 510 3

United States v. Oregon Medical Society, 343 U.S. 326.. 16

United States v. Price, 383 U.S. 787 ..... 7, 55

United States v. South Eastern Underwriters Ass'n, 322 U.S. 533 ..... 51, 52

Wasmuth v. Allen, 14 N.Y. 2d 391 43

Williams v. Fears, 179 U.S. 270 53

Yick Wo v. Hopkins, 118 U.S. 356 ..... 8, 9

MISCELLANEOUS

J.A.M.A., Vol. 200, No. 3 ..... 7, 41

Equal Protection of the Laws 9

Original Understanding of Equal Protection, 50 Cal. L. Rev. 131 9

Anticau, 40 Cal. L. Rev. 362 9

Federal Procedural Reform and States Rights, 40 Tex. L. Rev. 211 13

The Abstention Doctrine Reconsidered, 37 Tex. L. Rev. 815 13

The Limits of Judicial Objectivity, 12 Am. Un. L. Rev. 1 14

Thiers, De la Propriete 48

Constitutional Limitations on Corporate Authority, 100 Un. Pa. L. Rev. 49

Warren, Extent of Enterprise Monopoly in United States 49

Stocking & Watkins, Monopoly and Free Enterprise ... 49

Measurement of Industrial Concentration, 33 Rev. of Econ. & Stat. 49

CONSTITUTION OF U.S.

Article One, section 8 51

Article Four, section 2 ..... 30, 53, 54

Amendment XIV 43, 50

UNITED STATES CODE

Title 15

Section 26 ..... 1, 15

Sections 1-7 ..... 2, 7

Title 28

Section 1254 1

Section 1343 1

Section 2281 ..... 11, 17, 20

Section 2282 4

Section 2283 ..... 11, 15, 17

Section 2284 ..... 11, 17

Title 42

Section 1983 ..... 3, 7, 15

Section 1984 1

Section 1985 ..... 3, 7, 15

OHIO STATUTES

Chapter 4731, Ohio Revised Code

Section 4731.01 4

Section 4731.02 4

Section 4731.09 ..... 2, 29

Section 4731.15 4

OHIO STATUTES—*(Continued)*

	Page
Section 4731.16	4
Section 4731.17	4, 41
Section 4731.18	2, 3, 4, 50
Section 4731.19	4
Section 4731.20	4
Section 4731.29	2, 3, 4, 50
Section 4731.34	3
Section 4731.34-1	3
Section 4731.39	3
Section 4731.40	3, 55
Section 4731.45	55

To the Honorable Chief Justice and Associate Justices of The Supreme Court of the United States:

The above-named petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this proceeding on April 14, 1972.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in the Appendix hereto. The opinion and order by the District Court for the Southern District of Ohio was rendered on December 16, 1971. Copy of this opinion also appears in the Appendix hereto.

JURISDICTION

Jurisdiction for the original action was invoked by section 1984, Title 42, U.S.C.; section 1343, Title 28, U.S.C., and section 26, Title 15, U.S.C.

The judgment of the Court of Appeals for the Sixth Circuit was entered on April 14, 1972. A timely petition for rehearing was denied on May 30, 1972. Mr. Justice White of this Court extended the time within which to file a petition for writ of certiorari up to and including September 15, 1972. Copies of the opinion and order of the District Court and the order of Mr. Justice White extending the time appear in the Appendix herein. This Court's jurisdiction is invoked under section 1254(1), Title 28, U.S.C. and section 1984, Title 42, U.S.C.

QUESTIONS INVOLVED

1. Has not the abstention doctrine fashioned by this Court in Pullman become so distorted in this and various

other cases so as to constitute an unconstitutional invasion of the functions of Congress?

2. Since allopaths lack any education, training or experience whatever in the philosophy and practice of chiropractic, and cannot legally practice chiropractic, is not chapter 4731 of the Ohio Revised Code which gives the allopaths complete domination over chiropractors, not irrational and unreasonable and a detriment to the health of the people and therefore unconstitutional under the Fourteenth Amendment?

3. Since it is the publicly avowed intent of the allopaths and their national and state associations through a criminal conspiracy to put chiropractic out of business by all means available until the intent is accomplished, may the State of Ohio permit the allopathic medical board to accomplish this intent by using chapter 4731 of the Ohio Revised Code to further the conspiracy in such accomplishment without violating the Fourteenth Amendment and the Civil Rights Act?

4. Since the philosophy and practice of allopathy and chiropractic are so diametrically in conflict, one to the other, as to make unification of the two philosophies illogical, inconsistent, contra-indicated, unreasonable and irrational, is it not a denial of the equal protection clause of the Fourteenth Amendment to refuse chiropractors representation on the medical board?

5. May the members of the medical board, in order to further the intent ofthe conspiracy to put chiropractic out of business, deny to out-of-state chiropractors the same reciprocal conditions accorded to members of the schools of healing represented on the board without denying the equal protection clause of the Fourteenth Amendment?

6. Can the Ohio medical board, without violating Article IV, section 2 of the Constitution, the Fourteenth Amendment, and sections 1-7, Title 15, U.S.C., enforce the provisions of sections 4731.09, 4731.18, and 4731.29, of the Revised Code against chiropractors from other states desiring to remove to Ohio, such provisions being far in

excess to those applied to in-state chiropractors, the excess requirements being that in addition to those required from in-state chiropractors, out-of-state chiropractors must show that they have two years of college work in the arts and sciences in an approved college, and in addition produce a diploma from a medical or osteopathic college in good standing?

7. Does the pecuniary interest in convictions given to the medical board by section 4731.40 of the Ohio Revised Code not violate the principle enunciated in *Tumey v. Ohio*, 273 U.S. 510, 50 A.L.R. 1243, and *Meyers v. Shields* (Ohio CC), 61 Fed. 713?

STATUTORY PROVISIONS INVOLVED

United States: Sections 1-7, 26, Title 15, U.S.C.; sections 1343, 2281, 2282, 2283, 2284, Title 28, U.S.C.; sections 1983, 1984, 1985, Title 42, U.S.C. (Cited in full in Appendix hereto).

Ohio Statutes: Sections 4731.01, 4731.02, 4731.09, 4731.15, 4731.16, 4731.17, 4731.18, 4731.19, 4731.20, 4731.29, 4731.34, 4731.34.1, 4731.39, 4731.40, Ohio Revised Code. (Cited in full in Appendix hereto).

STATEMENT OF THE CASE

Prior to the filing of the present complaint in the District Court about 20 chiropractors and one naprapath filed a previous complaint against the Ohio State Medical Board and its members and the American Medical Association and all of its executive officers. The matter came before the same judge in the same District Court: *Hall v. Ohio State Medical Board*, Civil No. 69-280 (S.D. Ohio E.D. 1970). The judge granted the petition for a three-judge court. Copy of the decision appears in the Appendix hereto. The allega-

tions were somewhat similar to those in the instant case. The Court had held that:

> "Plaintiffs have filed a complaint which seeks declaratory and injunctive relief and which attacks the constitutionality of the provisions of the Ohio Revised Code which relate to the organization and powers of the Ohio State Medical Board (# #4731.01, 4731.02, 4731.15, 4731.39, 4731.40, 4731.41 and 4731.34, Ohio Revised Code). It is alleged that these statutes deny the plaintiffs and others similarly situated certain civil and constitutional rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.
>
> "Such a case must be heard by a Three Judge Court in compliance with Title 28, United States Code, Sections 2281 and 2284, unless the constitutional issue raised is 'plainly insubstantial,' *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713; *King v. Smith*, 392 U.S. 309 (1968). The constitutional challenge made herein is substantial. See *England v. Louisiana State Board of Examiners*, 375 U.S. 411 (1964)."

The Three Judge Court was organized and the case was never heard on the merits but dismissed "without prejudice" for failure to comply with Rule 8(a).

The Ohio State Medical Board was not a defendant in that suit. However, on October 24, 1969 the president of the American Medical Association, Dr. Gerald D. Dorman had made a pronouncement in Cleveland, Ohio, at a convention that "chiropractic should be put out of business. (*Cleveland Press*, Ohio, October 24, 1969). Following the lead given by Dorman in 1969, the Ohio State Medical Association joined in the campaign instigated by the American Medical Association and formulated a Resolution in its House of Delegates to put chiropractic out of business "by all means available until such times as its intent is

accomplished." The Resolution was numbered Resolution 4-70, by the Ohio State Medical Association. (The Blade, Toledo, Ohio, May 14, 1970). In the light of the fact that now by express Resolution the Ohio State Medical Association had actually joined the conspiracy, over 20 chiropractic doctors, some from other states who wished to remove to Ohio, and approximately 650 chiropractic patients and The Patients' Association For Chiropractic Education, filed this new complaint and added to the number of defendants, the Ohio State Medical Association and its officers. For some reason or other not available in the record the Court changed its mind and dismissed the complaint *actually on the merits*. On Appeal the Court of Appeal affirmed the order of the District Court and dismissed the appeal.

THE FACTS

The facts in this case are substantially uncontroverted. They are also very simple. The defendants in this case admit that they conduct a common conspiracy to put chiropractic out of business, and they have formulated resolutions by their Houses of Delegates declaring that they intend to do just that, and declare in these resolutions that the resolution seeks to eliminate "all future licensing of chiropractors" in Ohio and that the "resolution be implemented by all means available to the Ohio Medical Association until such time as its intent is accomplished." The most effective "means available" to accomplish the intent is the instrument of the defendant, the medical board. This board denies representation to the chiropractors and is composed of seven allopaths and one osteopath. The osteopaths won recognition by the decision of the Ohio Supreme Court in *State v. Gravett*, 65 Ohio St. 289 (1902). At that time chiropractic was a mere infant of seven years old. Since that time osteopath students are examined by osteopaths and osteopaths have been given all the rights and privileges accorded to the allopaths because of this repre-

sentation. The following facts are a good example of the discrimination in order to put chiropractic out of business. In 1956, 967 allopaths, surgeons and osteopaths received certificates, 536 by examination and 353 by reciprocity, or 91.9%. In 1957, 836 received certificates, 456 by examination and 320 by reciprocity or 92.8%. In 1958 out of 851, 425 by examination and 326 by reciprocity received certificates, or 88.2%. In 1959, out of 867, 398 by examination and 335 by reciprocity received certificates, or 84.5%. In 1960 out of 910, 421 by examination and 405 by reciprocity received certificates, or 90.8%. The applicants examined included both new and reciprocity applicants. On the other hand, during the same years no out of state chiropractor was given a certificate. In 1956, out of 82 applicants only 5 received certificates, or 6.1%. In 1957, out of 92 examined, 18 received certificates or 19%. In 1958, 98 were examined and only 16 received certificates, or 16.3%. In 1959, out of 94 examined only 11 were given certificates or 11.7%. In 1960, out of 82 examined only 27 received certificates or 32.9%. This is understandable because had the allopaths, surgeons or osteopaths been required to produce a diploma from a chiropractic college in the same manner that chiropractors have to produce a diploma from a medical college, or a college of osteopathy, the passing percentage of allopaths and surgeons would have been zero. Moreover, before graduation and licensure, it is obligatory for all allopathic and surgery students to pledge unquestioned acceptance and loyalty to allopathic and surgical philosophy and practice.

Summed up briefly and simply we are confronted with a medical board composed of seven allopaths and one osteopath. All of the members of the board belong to both defendants who are associations, one national and one state. As such the members of the board, being also members in the associations, they must abide by the Resolutions of these Boards that chiropractic should be put out of business by all means available until the intent of the resolutions is accomplished. What is rational or reasonable about

the fact that the chiropractors are completely dominated by a school of medicine, the allopaths, who know absolutely nothing about chiropractic except what has been proclaimed by the American Medical Association that it is a scientific cult and a hazard to the health of the American people? (*Journal of American Medical Association*, Vol. 200, No. 3, April 17, 1967). On page one of the District Court's opinion the judge stated:

> "Plaintiffs allege (1) a conspiracy to force chiropractors and other 'drugless physicians of the healing art' out of business in violation of Title 42, United States Code, Sections 1983 and 1985(3), (2) that Chapter 4731 of the Ohio Revised Code is unconstitutional and (3) violation of Sections 1-7 of the Sherman Anti-Trust Act, Title 15, United States Code, Sections 1-7."

First, it is the defendants who make the threat by express Resolutions that chiropractic should be put out of business by all means available. The threat makes the thing illegal. Moreover, the members of the medical board are bound by the Resolutions and bound to implement them by virtue of the power vested in them as members of the medical board. Moreover, the threats are implemented "under color" of law. The members of the board are agents of the State of Ohio. The American Medical Association and its officers, and the Ohio State Medical Association and its officers are private persons, jointly engaged with these state officials in the prohibited action. In such a case they are acting "under color" of law for the purposes of the Civil Rights Act. *United States v. Price*, 383 U.S. 787. Without the cooperation of the members of the medical board the plan to put chiropractic out of business could never be realized. Nor could it be realized if the chiropractors were represented on the board, even by a single member as are the osteopaths. Because the osteopaths are represented on the board they enjoy all the privileges conferred on the allopaths. This includes that of reciprocal conditions as to

osteopaths from out-of-state who desire to remove to Ohio. On the other hand, the chiropractors, *who are not represented on the board*, are denied these privileges. So it is only by the absence of chiropractors on the board that this conspiracy to put the chiropractors out of business can be effected. This is fully realized by the defendants and they must maintain the *status quo* where their plans can be implemented by the members of the board, as without the aid of the board the allopaths must fail. And it is unfortunate that the Ohio chief law enforcement agent is supporting the conspiracy instead of prosecuting it. This would have been legal in Germany before World War II as monopoly was protected by the state. Here, of course, it is not. It can only be illegally protected by the attorney general. The same is true of gambling, prostitution, and other "business" crimes. Without the protection by the prosecution officials they must fail. The Attorney General has no more legal right to defend the criminal actions of these defendants which include the members of the medical board any more than he has the right to defend the prostitution, gambling, or drug selling racketeers. In fact in defending them and the defendants in this case he becomes an accomplice in the joint venture in violation of the Civil Rights Act, and without his protection the conspiracy could not exist.

In his memorandum opposing convening of a three judge court filed in the district court on July 23, 1971, the attorney general states at page 9 that: "Reciprocity in licensing is strictly a matter of legislative policy and not a constitutional right." The right to trial in a criminal case by indictment is not a constitutional right either according to *Hurtado v. California*, 110 U.S. 516, but the right to equal protection of the law as concerns the composition of the grand jury that finds the indictment is a right under the Fourteenth Amendment. This was settled nearly a century ago in *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). Unquestionably the right to operate a business comes within the power of the State but the regulations under this power

must conform to the Equal Protection Clause of the Constitution. In *Yick Wo v. Hopkins*, supra, out of 200 applications for licenses by Chinese laundrymen all were denied, save one. In Ohio out of thousands of application for reciprocity by out-of-state chiropractors not one has ever been allowed, and out of hundreds of applications by out-of-state osteopaths, rarely has one been denied. This, because the osteopaths are represented on the medical board. Paraphrasing *Yick Wo*, in the instant case presenting the reciprocal proposition in actual operation, the law is administered exclusively against chiropractors as to warrant the conclusion that whatever may have been the intent of the legislation, it is applied by the medical board representing the State of Ohio itself, and with a mind so unequal and oppressive as to amount to a practical denial by Ohio of that equal protection of the laws which is secured to all persons, "by the broad and benign provisions of the Fourteenth Amendment. . . . Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as to practically make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." *Yick Wo v. Hopkins*, 118 U.S. 356. See, also, Tussman & tenBroek, *The Equal Protection of the Laws*, 37 Cal. L. Rev. 341 (1949); *The Original Understanding of Equal Protection*, 50 Colum. L. Rev. 131 (1950) Antieau, 40 Calif. L. Rev. 362 (1952).

On the same page 9 in the Attorney General's memorandum he admits the discrimination in the licensing of out-of-state chiropractors. He says:

> "The Ohio licensing statutes for chiropractors offer applicants two alternative methods for being licensed. An applicant may either present a diploma from an approved school and pass an examination or he may offer proof that he has previously been licensed in another state, and has graduated from an

> approved school giving instructions in chiropractic and is a high school graduate *with two years of collegiate work in an approved college of arts and sciences.*"

The attorney general speaks of two different people, one from in-state who has never been licensed before. In this case the applicant may go through the examination. That examination provides that (1) the applicant submit documentary evidence of preliminary education *equal to graduation from a first grade high school.* (2) submit documentary evidence of completion of a course at a school teaching anatomy, physiology, bacteriology, pathology, hygiene and diagnosis, and such other subjects appropriate to the limited branch of medicine, certificate to practice which is applied for. (3) Pass a licensing examination in the subjects named in (2), and satisfy the board as to character and moral standing. But when it comes to the applicant who possesses a valid license from another state, in addition to evidence of graduation from a high school he must also prove that he has "*two years of college work in an approved college of arts and sciences.*" This is not required from the in-state person applying for a license. Some states, even with 100% chiropractic examining board, do require applicants to have "two years of college work in an approved college of arts and sciences," but this condition must be applied to all applicants alike in order to satisfy the Equal Protection Clause. Construing, Article IV, section 2 of the Constitution in the *Slaughterhouse Cases*, (1873), 16 Wall. 75, the Court stated the proposition clearly:

> "Its sole purpose was to declare to the several states, that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restriction on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."

REASONS WHY THE WRIT SHOULD BE GRANTED

I. Abstention.

For over three decades this Court has applied a judge fashioned type of legislation called "abstention" to escape the exercise of jurisdiction which is in complete conflict with the jurisdictional doctrine expounded by Chief Justice Marshall made over a century and a half ago in *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). Like all creeping tyrannies the judge-fashioned legislation was but a mild infringement of the powers conferred on Congress by the Constitution, but like all tyrannies, judicial or otherwise, it was inevitable that the cancer would become malignant and destroy its host. *Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941). At first it was an attempt to add to the legislation something it did not contain, but gradually the disease metastized until the entire legislation was put in reverse, and now the transformation has created greater mischief than that which existed before the statute was enacted. The legislation concerned the convening of a three-judge court and was designed to provide a more responsible forum for litigation of suits which, if successful, would render void state statutes embodying important state policies.

The purpose of the three-judge scheme was in major part to expedite important litigation, and the statute should not be construed in such a way that litigation is delayed while the proper composition of the tribunal is litigated. *Swift & Co., v. Wickham*, 382 U.S. 111. The legislation involved is sections 2281, 2283, and 2284, Title 28, U.S.C. The first purpose of the statute was to insulate operation of the statutory scheme from total paralysis by a single federal judge's improvident issuance of broad injunctive orders. *Fremed v. Johnson*, 311 F. Supp. 1116 (1970). The other equally important purpose was to abolish the evils of long delay caused by normal appellate procedure,

so that direct appeal was provided in those instances where the three judge court was convened, and such statutory scheme was not intended to be easily circumvented. *Smith v. Pearson*, 294 F. Supp. 611 (1968).

The original application of the judicially-engrafted-legislation arose where state action was challenged in a federal court as unconstitutional, but where there were ancillary questions of state law in the case which could be properly presented to a state court, and if the complainant was sustained, there would be no need for the federal court to pass on the federal question. The court substituted its wisdom for that of Congress in *Railroad Commission v. Pullman Co.*, 312 U.S. 496, 500. An unanimous Court said:

> "In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication. . . . The resources of equity are equal to an adjustment that will avoid the waste of a tentative decision as well as the friction of a premature constitutional adjudication."

But this cancer of judicial-legislation like any other cancer keeps on expanding. No longer is abstention invoked when and only when a determination of a state issue might settle the action but a new gimmick has been created which, in effect, repeals completely sections 2281, 2283 and 2284 of Title 28, U.S.C. The "substantial" constitutional question. With this gimmick "abstention" has become the rule rather than the exception. Regretting his concurrence in the unanimous opinion in Pullman, Mr. Justice Douglas wrote in *England v. Louisiana Medical Examiners*, 373 U.S. 411, 425, a case, because of the "abstention" doctrine covered nearly 11 years of litigation:

> "I was a member of the Court that launched Pullman and sent it on its way. But if I had realized the creature it was to become, my doubts would have been far deeper that they were.

"Pullman from the start seemed to have some qualities of a legal research luxury. As I said in *Clay v. Sun Ins. Office*, 363 U.S. 207, 228 (dissenting opinion):

"Some litigants have long purses. Many, however, can hardly afford one lawsuit, let alone two. Shuttling the parties between state and federal tribunals is a sure way of defeating the ends of justice. The pursuit of justice is not an academic exercise. There are no foundations to finance the resolution of nice state law questions involved in federal court litigation. The parties are entitled—absent unique and rare situations—to adjudication of their rights in the tribunals which Congress has empowered to act.'

"As recently stated by the late Judge Charles E. Clark of the Second Circuit Court of Appeals, 'As a result of this doctrine, individual litigants have been shuffled back and forth between state and federal courts, and cases have been dragged out over eight- and ten-year periods.' *Federal Procedural Reform and States' Rights*, 40 Tex. L. Rev. 211, 221 (1961).

"Professor Charles A. Wright described the results that occurred when this doctrine was applied to a suit to enjoin the enforcement of a state statute restricting the rights of state employees to join unions (*Government Employees v. Windsor*, 353 U.S. 364):

"'. . . after five years of litigation, including two trips to the Supreme Court of the United States and two to the highest state court, the parties still had failed to obtain a decision on the merits of the statute.' *The Abstention Doctrine Reconsidered*, 37 Tex. L. Rev. 815, 818 (1959)"

In 375 U.S. at 436 Mr. Justice Douglas concluded his opinion with a very realistic thought. He said:

"The late Judge E. Clark made an apt and pertinent observation on the impact of the Pullman doctrine. At times, he said, 'the upshot inevitably seems

to be a negative decision or, in plain language, a defendant's judgment.' Delay which the Pullman doctrine sponsors, keeps the status quo entrenched and renders' defendant's judgment' even in the face of constitutional requirements. These evils are all compounded by what we do today, making it likely that litigants seeking the protection of the federal courts for assertion of their civil rights will be ground down slowly by the passage of time and the expenditure of money in state proceedings, leaving the ultimate remedy here, at least in many cases, an illusory one."

The primary purpose of this Court is to settle disputes and adjudicate rights as to those who come before the court. Judges are great or small because of their decisions, not their refusals to decide. As Judge Clark said in *The Limits of Judicial Objectivity*, 12 Am. Un. L. Rev. 11, 12:

"Thus would not Marshall be a lesser judge, as well as a lesser man, had not his great opinions reflected his profound belief in the destiny of a national government? So, too, of Holmes and Brandeis in their concern for the sanctity of the individual person? And though I would not have been ready so to concede some years ago, I think we must respect the four horsemen of the '30s—McReynolds, Van Devanter, Sutherland, Butler—for being true men of conviction and courage, even though events have shown they were facing toward a past which could not be recaptured. Incidentally my references, I believe, point up those whom history has held to be the great judges—men of deep conviction and activists all!"

This Complaint was filed under the Civil Rights Act. On page 7 of the original complaint read:

"2. Jurisdiction is conferred upon this Court by Section 1984, Title 42, U.S.C., Section 1343, Title 28, U.S.C., and Section 26, Title 15, U.S.C."

This was conceded by the District Court in its opinion page 1, when it said:

> "Plaintiffs allege (1) a conspiracy to force chiropractors and other 'drugless physicians of the healing art' out of business in violation of Title 42, United States Code, Sections 1983 and 1985(3), (2) that Chapter 4731 of the Ohio Revised Code is unconstitutional and (3) violation of Sections 1-7 of the Sherman Anti-Trust Act, Title 15, United States Code, Sections 1-7."

Section 2283, Title 28, U.S.C. the so-called anti-injunction statute provides that:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

It has now been clearly settled that this statute comes within the exception of section 2283, Title 28, U.S.C. *Mitchum v. Foster*, 405 U.S. —, 32 L. Ed 2d 705. See, also, *Lynch v. Household Finance Corp.*, 405 U.S. 538, 31 L. Ed 2d 424. Section 1984, Title 42, U.S.C. provides that:

> "*All* cases arising under the provisions of this Act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court."

Section 26, Title 15, U.S.C. also comes within the exception in section 2283 as it is a remedy by injunction expressly "authorized by Act of Congress." That section provides that:

> "Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief,

> in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings,' and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue . . ."

Several of the chiropractor plaintiffs in this case are living in other states. They want to but cannot remove to Ohio because first, reciprocity is available only to the schools of the healing art who are represented on the medical board; second, in addition to the qualifications applied to in-state chiropractors, those licensed in another state must show, in addition of the requirements applicable to in-state chiropractors, two years of college work in the basic arts and sciences and a medical degree from an accredited allopathic or osteopathic college; third, the defendants have threatened by public announcements and by express resolutions by their Houses of Delegates that they are dedicated to putting chiropractic out of business and according to all the evidence available for any hearing, the members of the medical board are implementing the threats "under color" of law through the enforcement of criminal statutes, not to convict, but in bad faith as one of the "means available" until the "intent" of the conspiracy is accomplished. Therefore these out-of-state chiropractors who desire to remove to Ohio, are barred from bringing their skills, talents, experience, equipment, and education into Ohio from the states in which they now reside. It is now well settled that the transportation of persons is "commerce" within the meaning of the Sherman Act. *Edwards v. California* (1941), 314 U.S. 160. In the courts below the Attorney General relied on *United States v. Oregon Medical*

Society, 343 U.S. 326. There, of course, the conspiracy ceased in 1941, while the Government sought to enjoin the Society in 1949 when the conspiracy had ceased to exist. *Industrial Association v. United States*, 268 U.S. 64, 84. Unquestionably, the defendants are subject to the provisions of the Sherman Act, as medicine is trade. *Pratt v. British Medical Association*, (1919), 1 K.B. 224, 227; *American Medical Association v. United States*, 130 F. 2d 233, aff'd. 317 U.S. 519.

The language contained in sections 2281, 2283 and 2284 of Title 28, U.S.C. is very simple. Section 2281 provides that an injunction shall not be granted restraining the enforcement of a state statute by any district court or judge upon the ground of its unconstitutionality unless the application is heard by a district court of three judges under section 2284. How much more simple could Congress have made the language? Section 2283 provides that a court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by an Act of Congress. How much more simple could the language be? In the instant case two express statutes exist which authorize injunctive relief. The Civil Rights statute, *Mitchum v. Foster*, 32 L. Ed 2d 705; Sections 1983, 1984 and 1985, Title 42, U.S.C. Section 26, Title 15, U.S.C. Section 2284 of Title 28, U.S.C. tells the judge before whom the application is made what to do. It expressly provides without any ambiguity or need for construction that: "On the filing of the application, he shall *immediately* notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge." None of these statutes authorize the district judge before whom the application is made to make any determination whatever on the merits of the application. This function is for the three judge court. Moreover, section 2284, Title 28, subsection (5) provides that "Any one of the three judges of the court may perform *all* functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil proce-

dure." On the pleadings before this selected judge, he could determine that the application was frivolous or had no merit and suggest it be dismissed. This is not, and under the statute cannot be determined by the judge before whom the application was originally made. If the petition is dismissed by the three judge court then an appeal can be had direct to the Supreme Court of the United States. This was the intent of Congress in enacting the statutes. Admittedly, Congress would have performed a better job if it had provided that, if a question was raised in the pleadings which could be better settled under state law, some clause could have been inserted in the statute which would provide a procedure to remedy this omission, and the remedy could be along the lines of the Pullman doctrine. But such an amendment cannot be made by judicial legislation as was the case here. Only Congress can make or amend the laws. The Court may suggest a legislative remedy but that is the limit of its jurisdiction. The confusion injected into these statutes by this Court with its judicial legislation amendment has even left the Chief Justice of this Court with the feeling that the three judge court statute should be thrown into the discard. There have also been complaints that this statute put an overload of work on the Supreme Court, or if carried out in the manner intended by Congress, this would be a consequence. This is erroneous because the Supreme Court is the most underworked court in the Nation. Recent statistics prove this. See, also, *The Supreme Court and its Case Load* (1960), 45 Cornell L. Quart. 401, by Mr. Justice William O. Douglas. Moreover, there are no Congressional enactments in existence which have caused more prolongation in litigation than that instigated by the Pullman judicial-legislation. In *England v. Louisiana Medical Examiners*, the case could have been disposed of by a three judge court summarily in ten minutes instead of 11 years. The medical practice act in Louisiana was designed exclusively for allopaths and surgeons, not for chiropractors, as chiropractors did not have the education to qualify for allopathy or surgery. Moreover, allopaths or

surgeons on the other hand lack the education and qualifications to examine chiropractors. And, again, the philosophy and practice of surgery and allopathy is so diametrically in conflict with the philosophy and practice of chiropractic as to make unification of the two philosophies illogical, inconsistent, and contra-indicated. It is a crime against the people to allow allopaths to examine chiropractors or dominate them, and vice versa. It would be dishonest to the patients. Such mixings of these practices are therapeutic inconsistencies, are unreasonable, irrational, absurd and dangerous. See dissent of Judge Wisdom in *England v. Louisiana Medical Examiners*, 263 F.2d 661 in the consideration following.

2. Decisions Relied On By The Court Below

The issues involved in the decisions relied on by the District Court or the Court of Appeals have little or no relation to the issues involved in the instant case. These decisions were *Collins v. Texas*, 223 U.S. 288; *England v. Louisiana State Board of Medical Examiners*, 263 F.2d 661, cert. den., 359 U.S. 1012 (1959), and *England v. Louisiana State Board of Medical Examiners*, 246 F. Supp. 993 (1965), aff'd 384 U.S. 885 (1966); *Hitchcock v. Collenberg*, 140 F. Supp. 894, affirmed, 353 U.S. 919; *McNaughton v. Johnson*, 242 U.S. 344 (1917); *Crane v. Johnson*, 242 U.S. 339; *New Jersey Chiropractic Association v. State Board of Medical Examiners*, 79 F. Supp. 327 (1948); *Heaney v. Allen*, 425 F.2d 869. In the following pages we also show that *Anderson v. Richardson*, 454 F.2d 596 and *Ex parte Poresky*, 290 U.S. 30 are not in point. These two cases were relied on by the Court of Appeals to affirm the dismissal of the complaint. In fact *Anderson v. Richardson*, supra favors the petitioner in this case as it relied on *Goldberg v. Kelly* (1970), 397 U.S. 254. Both concerned welfare benefits.

Even if section 2281, Title 28, U.S.C. expressly authorized the District Court before whom the complaint was filed to determine if the constitutional question presented was or was not plainly unsubstantial this would require a hearing and a finding of facts. We have here a situation where the defendants, the American Medical Association and its chief executive claims that chiropractic must be put out of business, and the Ohio State Medical Association, another defendant makes a Resolution through its House of Delegates that the threat to put chiropractic out of business must be implemented by all means available until the "intent" is accomplished, and the members of the medical board, all of which are members of the two defendant associations conduct this implementation "under color" of law, and then a Court rules that the question involved is not substantial! The facts in this case cannot be even remotely compared with those in the cases relied on to dismiss this lawsuit. Could anything be more absurd?

Collins v. Texas, 223 U.S. 288 (1912). In this case, the plaintiff in error was held upon an information charging him with practising medicine for money by treating a patient for hay fever by osteopathy, without having registered his authority as required by a Texas statute of April 17, 1907. (Gen. Laws, 1907, p. 224). That statute established a Board of Medical Examiners and required that:

> "'. . . all legal practitioners of medicine in this State, who, practising under the provisions of previous laws, or under diplomas of a reputable and legal college of medicine, have not already received license from a State Medical Examining Board of this State' to prove their diplomas, or existing license, or exemption existing under any law; whereupon *they are to receive a verification license*. Section 6. By section 7 applicants *not* licensed under section 6 must pass an examination, conditioned among other things on their

being graduates of 'bona fide reputable medical schools;' schools to be considered reputable 'whose entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of five months each.' By section 9 the examinations are to be fair to every school of medicine, are to be conducted on the scientific branches of medicine only, and are to include anatomy, physiology, chemistry, histology, pathology, bacteriology, physical diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Those who pass are to be granted licenses to practice medicine. By section 10 nothing in the act is to be construed to discriminate against any particular system, . . .

"The only other material sections of the act are sections 13 and 14, the former of which declares that 'any person shall be regarded as practising medicine within the meaning of this act . . . (2) Or who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method or to effect cures thereof, and charge therefor, directly or indirectly, money or other compensation.' By section 14 and person practising medicine in violation of the act is punished by fine and imprisonment, and is not to recover anything for the services rendered." (*Collins v. Texas*, 223 U.S. 294-295)

The plaintiff in Collins held a diploma from a chartered American School of Osteopathy, Kirksville, Missouri, after a two year study there which was the full course. He made no allegations in his habeas corpus proceedings that the Board of Medical Examiners was unconstitutionally organized because his school was not represented on such Board, nor did he claim that the Board was not competent to examined him for a license, despite the fact that allopathy and osteopathy are so diametrically in conflict to

the philosophy and practice of the other as to make unification of the two philosophies illogical, unreasonable, inconsistent, and contraindicted. See *State v. Gravett* (1901), 65 Ohio St. 289 (Osteopath), which decision compelled the placing of an osteopath on the Ohio Medical Board. See, also, *Hayden v. State* (1902), 81 Miss. 291 (Osteopath); *State v. Liffring*, 61 Ohio St. 39; *State of Idaho ex rel Medical Board v. Smith* (1959), 81 Idaho 103 (Naturopaths); *D'Amico et al. v. Board of Medical Examiners* (1970, 6 Cal. App. 3rd 716, *Collins* did not claim as *Gravett* did that "If osteopaths are practising medicine, they are physicians representing a recognized school of practice, and . . . they are entitled to representation upon the Board of medical examiners." 65 Ohio St. at 304-305. As provided by the Texas law Collins did not present his "diploma to the Board of Medical Examiners or attempt to secure either a verification license or license in any form." *Collins v. Texas*, 223 U.S. at 295. The Court also said at p. 296 that:

> "We should presume, . . . that the reference in section 4 to the diploma of a reputable and legal college of medicine, and the confinin section 7 of examinations to graduates of reputable medical schools, use the words medicine and medical with the same broad sense as section 13, and that *the diploma of the plaintiff in error would not be rejected merely because it came from a school of osteopathy*. In short, the statute says that if you want to do what it calls practising medicine you must have gone to a reputable school in that kind of practice. Whatever may be the osteopathic dislike of medicines, neither the school nor the plaintiff in error suffers a constitutional wrong *if his place of tuition a medical school by the act for the purpose of showing that it satisfies the statutory requirement. He cannot say that it would not have been regarded as doing so, because he has not tried. Dent v. West Virginia*, 129 U.S. 114, 124."

What was actually before the Court in *Collins v. Texas*, *supra*, was the interpretation of section 13 of the General Laws of Texas. Collins claimed the definition of practising medicine in the statute was arbitrary or irrational. Such a claim has little or not substance as the statute's only object was to explain who fell within the purview of the act. We cannot see where *Collins* can have any application to the instant case as none of the issues raised in Collins are present here.

The District Court below also relied on *England v. Louisiana State Board of Medical Examiners*, 263 F.2d 661, cert. den., 359 U.S. 1012 (1959, and *England v. Louisiana State Board of Medical Examiners*, 246 F. Supp. 993 (1965), aff'd. 384 U.S. 885 (1966), *rehearing den.* 385 U.S. 890 (1966). Here, again, to classify any decision as a valid precedent we must look to the issues raised and determined in the particular case. We must compare the issues in the claimed precedent case to those issues presented in the case to be determined. If the issues are not the same then the claimed precedent has no bearing on the case to be determined and the citation is merely to give a false impression. What were the issues raised in England, and what issues were not raised? There was no claim in the *England Case* that the State Board of Medical Examiners was unconstitutionally organized as to have an application to chiropractors because the Board was composed exclusively of allopaths and the chiropractors were not represented on the Board. Nor was there any claim advanced by the plaintiffs that the members of the Board, composed exclusively of allopaths, as allopaths were unqualified by education, experience or knowledge of chiropractic, to examine chiropractors. To the contrary the plaintiffs in England, recognized the allopaths as competent to examine and license chiropractors, but the chiropractors demanded that they be issued the same license as the allopaths. This was very clearly outlined by Judge Wisdom in his dissent in *England v. Louisiana State Board of Medical Examiners*, 263 F.2d 661, 676-677. There he wrote:

> "The complaint alleges that the Board of Examiners refuses to *accept* the plaintiffs as candidates eligible to stand an examination for a medical license, although the plaintiffs have diplomas from chiropractic schools. The plaintiffs allege that this is an unreasonable and arbitrary application of the statute and ask that the Board be enjoined 'from so enforcing the statute complained of herein.' They ask this Court to order the Board to give them examinations for a license under the Act. In other words, plaintiffs *may* say that they intend to practice only chiropractic—but in this suit they are demanding the same license issued to surgeons or heart specialists."

Concededly there are subjects in the curriculum of the allopathic colleges which are included in the curriculum of chiropractic colleges. These subjects are anatomy, physiology, chemistry, bacteriology, pathology, hygiene, and diagnosis. Unquestionably, allopaths would be qualified by knowledge and experience to examine chiropractors on these subjects, and chiropractors would be equally qualified to examine allopaths on these subjects. On the other hand, in the curriculum of the chiropractic colleges there is over 1,700 60 minute hours of study in the chiropractic colleges exclusively dedicated to the philosophy, principle and practice of chiropractic of which the allopaths are completely ignorant. Moreover, the philosophy and practice of chiropractic cannot be reconciled with the philosophy and practice of allopathy or for that part, surgery. The chiropractors in England sought the impossible. As Judge Wisdom further stated in his dissent in *England* (263 F.2d at 676-677):

> "The meaning is that the holder of such a license (under the Medical Practice Act of Louisiana) is a qualified surgeon and a qualified medical practitioner. It does not seem arbitrary to me that a state legislature should be able to say to its citizens that we shall try to protect you from all incompetent persons (in-

cluding chiropractors) administering drugs, performing brain surgery, and prescribing cancer cures, by requiring all candidates for a medical license to have received adquate instruction in surgery and materia medica from practicing surgeons and practicing medical doctors associated with a medical college of recognized merit. It seems reasonable to me that the legislature should say, even ability to pass a written examination on surgery is not enough; a man must witness and study surgical operations actually being performed, before he can put up a sign with 'Dr.' in front of his name. You don't learn surgery by reading about it in a fat book.

". . . *No state allows chiropractors to be issued a license under the general provisions of a medical practice act.* (emphasis in original) in every state where chiropractors are permitted to practice there is either a special act applicable to chiropractors or special provisions dealing with chiropractors. In all of these states the law, in terms, prohibits chiropractors administering drugs and medicines, performing major or minor surgery, and practicing obstetrics or osteopathy. (Colorado Rev. Stat. 1953 ch. 23-1-2; Alabama Code 1940, Tit. 46 sec. 259; Georgia Code, Ann. Title 84, section 509). And in such states a chiropractor may hold himself out only as a doctor of chiropractic. But the purpose of the licensing provisions of the Louisiana Medical Practice Act is to authorize a person to do the very things a chiropractor is prohibited from doing in the states granting licenses to chiropractors."

So it must be concluded that the issues raised in *England v. Louisiana State Board of Medical Examiners*, supra, have no bearing whatever to the issues raised in the instant case.

In its opinion in the instant case the District Court was in error when it said on page 4 of its opinion that:

"All arguments raised by the plaintiffs here have been considered by lower federal courts and ruled on by the United States Supreme Court in the titanic battle between a chiropractor named Jerry England and the Louisiana State Board of Medical Examiners. A review of the various Supreme Court decisions appears in *England v. Louisiana State Board of Medical Examiners*, 263 F.2d 661, 666 (5th Cir. 1959), cert. den., 359 U.S. 1012 (1959).

"The policy of the Supreme Court has been, and continues to be, to review with reluctance and self restraint state regulations in the medical field. When, after a prolonged procedural battle, the federal courts finally reviewed the Louisiana Medical Practice Act they upheld the legislation. *England v. Louisiana State Board of Medical Examiners*, 246 F. Supp. 993 (1965) *aff'd.*, 384 U.S. 885 (1966), *rehearing den.*, 385 U.S. 890 (1966).

As counsel has clearly pointed out in the proceding pages the issues in *England* are not the issues in the case before this Court. They do not seek any license or certificate as issued to an allopath or surgeon under the Ohio Revised Code as the chiropractors in the *England Case* did. Counsel brings to the notice of this Court that Ohio is the only state in the Union where the allopaths and one osteopath have complete domination over chiropractors by statute. As for Louisiana, it is evident from the claims made by the chiropractors in *England v. Louisiana State Board of Medical Board*, supra, the chiropractors there, recognizing the jurisdiction of the medical board, demanded the same license as the allopaths. In Mississippi, chiropractors practice under the common law as do the naturopaths in Idaho. *State v. Smith*, 81 Idaho 103. See, also, *State v. Armstrong* (1923), 38 Idaho 493, 225 P. 491, 33 A.L.R. 835 (Chiropody); *Berry v. Summers* 76 Idaho 446, 283 P.2d 1093 (Dental Mechanic). These cases are consistent with the Fourteenth Amendment. *Meyer v. Nebraska*, 262 U.S.

390, 29 A.L.R. 1446; *Mugler v. Kansas*, 123 U.S. 623; *Chenoweth v. State Medical Examiner*, 57 Colo. 74, 141 Pac. 132, Ann. Cas. 1915D, 1188

In the case before this Court, the chiropractic, naprapathic and other drugless schools involved, claim as their first point that: if they are practicing medicine, they are physicians representing a recognized school of practice, and under the law, they are entitled to representation upon the board of medical examiners. Chiropractors and Osteopaths were ignored in the organization of the medical board. After the decision in *State v. Gravett*, 65 Ohio St. 289, the osteopaths were given representation on the board. If the chiropractors in Ohio are practicing medicine before they can be required to even appear for examination, there must be a board of examiners upon which the school of chiropractic has its representative. If the allopaths and osteopaths can be examined only by allopaths and osteopaths respectively, chiropractors have the right to be examined only by chiropractors. If they are practicing medicine, they are entitled to representation on the Ohio medical Board. If they are denied these privileges, they no longer enjoy equal protection of the laws. If the board is illegally organized as chiropractors, it has no lawful authority to examine chiropractors. As the law discriminates against chiropractors, it is unconstitutional, and void. This is the primordial question in this case. If the plaintiffs are sustained on this question, the remaining questions disappear automatically. All that the chiropractors actually ask is that they get the same treatment as did the osteopaths as a consequence of the decision in *State v. Gravett*, 65 Ohio St. 289. In that case the Supreme Court of Ohio clearly pointed out in 65 Ohio St. at 312, that "Authority to discriminate against osteopathy would imply authority to discriminate against any other school of medicine. It seems clear from the reasons involved, and from the discussion of the subject, . . . that this discrimination against those who occupy the position of the defendant is unwarrantable, and that compliance with it cannot be required." In *State v.*

Smith, 81 Idaho at 110 the Idaho Supreme Court came to a similar conclusion as to the naturopaths. It said:

> "To require one desiring to engage in the practice of naturopathy to meet the requirements prescribed for physicians and surgeons would be unreasonable regulation of a recognized calling, unnecessary for the public's protection. It would in most, if not all, instances amount to prohibition. So far as Section 54-1802, I.C., affects the practice of naturopathy, the act is unconstitutional and void."

To the same effect was the decision in *People v. Love*, 289 Ill. 304, 131 N.E. 809, 16 A.L.R. 703, concerning chiropractos. In that case the Illinois Supreme Court said:

> "The Supreme Court of Ohio, in the case of *State v. Gravett*, 65 Ohio St. 289, 55 L.R.A. 791, 62 N.E. 325, declared a legislative enactment void which discriminated against osteopaths by requiring them to hold diplomas from a college which required four years of study as a condition to their obtaining limited certificates, which would not permit them to prescribe drugs or perform surgery, and which did not require such time and study from those contemplating the regular practice as a condition to their obtaining unlimited certificates for the practice of medicine and surgery. For like reasons we must hold that section 5 of the statute now in question is void, because it unlawfully and unjustly discriminates against one class of physicians, or those desiring to become physicians, by requiring that, before they can practice treating human ailments without the use of drugs, medicine, or operative surgery, they must be graduates of a professional school, college, or institution teaching that system which requires as a prerequisite for graduation a four-year course of instruction, which for one who desires to practice medicine and surgery in all their branches the only professional education

required is that he be a graduate of a medical college prior to July 1, 1922, deemed to be reputable and in good standing at the time of his graduation, and has completed a course of study in such college in accordance with the law and the rules of the state board of health established and in force at the time of his graduation. . . .

". . . The prejudice existing against chiropractors by medical men or osteopathic physicians, is known to be intense and in many cases very unreasonable. For a chiropractor to have to conform to such a regulation would in all probability result in his being excluded from any examination whatever by reason of his inability to obtain such a certificate, although he might be able to establish a good moral character and a good professional standing by good, competent men in his own or other professions or callings outside the medical profession."

In Ohio such conditions as those outlined in *People v. Love*, *supra*, are applied to out-of-state chiropractors who desire to remove to Ohio, while students residing in Ohio may require (1) documentary evidence of preliminary education received prior to entering upon study equal to graduation from a first grade high school; (2) documentary evidence of satisfactory completion of a course in anatomy, physiology, bacteriology, pathology, hygiene and diagnosis and (3) pass an examination of these subjects together with a diploma from a chiropractic college. But for the already out-of-state licensed chiropractor who desires to remove to Ohio, he requires in addition to the qualifications cited above for in-state applicants, "The minimum requirement shall be two years of collegiate work in an approved college of arts and sciences in addition to high school graduation." (Section 4731.09, Ohio Revised Code). The applicant from out-of-state under the statute must also ". . . produce a diploma from a medical institution in the United States in good standing as defined by the

board at the time the diploma was issued or produce a diploma from a school or college of osteopathy in the United States in good standing at the time the diploma was issued. . ."

It has been alleged from the very outset of this case that such discrimination against citizens from other states who desire to remove to Ohio violated Article IV, section 2, of the Constitution, the Fourteenth Amendment, the Civil Rights Act and the Anti-trust laws since the discrimination is a restraint on interstate travel, movement and commerce, and it is so designed. See *Edwards v. California*, 314 U.S. 160; Article 1, section 8; *Slaughterhouse Cases*, 21 L. Ed. 394, 16 Wall. 75; Article IV, section 2, Constitution of United States; Amendment XIV.

Hitchcock v. Collenberg, 140 F. Supp. 894, affirmed, 353 U.S. 919 concerned naturopaths in Maryland. After the decision of the Maryland Court of Appeals in *Aitchison v. State* (1953), 204 Md. 538, a bill was introduced in the Maryland Legislature in 1955, known as House Bill 129, which, if it had been enacted, would have added 12 new sections to the law, creating a Board of Naturopathic Examiners. That bill contained the following definition of naturopathy:

> "For the purposes of this sub-title naturopathy is hereby defined to be one of the healing arts whose scope, purposes and methods of practice are as follows: Naturopathy is a system of healing for the prevention, diagnosis, care and treatment of injuries, deformities, ailments, diseases and abnormalities of the human mind and body by means of such arts, sciences, methods and agencies of healing as make use of the healing properties and principles inherent in air, sunshine, light, electricity, heat, cold, climate, water, earths, exercise, work, rest, recreation, sweats, baths, packs, irrigations, inhalations, manipulations, corrective gymnastics, psychology, physics, mechanics, bio-chemistry, dietetics, enzymes, vitamins, minerals,

tissue salts and substances naturally found in or required by the body, oxygen, ozone, herbs, external applications, apparatus, appliances, mental hygiene, physical culture, first aid, hygiene and sanitation; provided, however, that except as hereinbefore specified, the practice of naturopathy shall not include the use of drugs, surgery, destructively radioactive substances, or x-rays, except for diagnostic purposes."

According to the National College of Drugless Physicians in Chicago, Illinois (*Oosterveen v. Board of Medical Examiners*, 246 P.2d 136 (Cal.), (1952), Some of the following subjects are taught and are listed in the curriculum of these colleges as follows: Anatomy, including Dissection (648 hours); Histology and Embryology (120 hours); Chemistry including Toxicology (252 hours); Bacteriology (96 hours); Obstetrics and Gynecology (120 hours); Diagnosis: Symptomatology, X-Ray, Physical Clinical and Laboratory Technic (718 hours); Eye, Ear, Nose an Throat (48 hours); Orthopedics (48 hours); Pediatrics (48 hours); First-Aid and Minor Surgery (48 hours); Advanced Therapeutics (72 hours).

In the light of the definition given to naturopathy by the naturopathic associations themselves when the proposed legislation in Maryland was advanced, and together in the light of the subjects taught in the naturopathic colleges as cited above, covering 2,170 hours it does not seem unreasonable that the license to practice naturopathy in Maryland should be issued by the State Board of Medical Examiners. This is reinforced by the provisions contained in section 138 of Article 43, which defines what is deemed to be the practice of medicine in Maryland. Section 138 provides that:

"Any person shall be regarded as practicing medicine within the meaning of this sub-title who shall append to his or her name the words or letters 'Dr.,' 'Doctor,' 'M.D.,' or any other title in connection

with his name, with the intent thereby to imply that he or she is engaged in the art of science of healing, or in the practice of medicine in any of its branches, or who shall operate on, profess to heal, prescribe for, or otherwise treat any physical or mental ailment or supposed mental ailment of another, or who shall for hire or for any gratuity or compensation, either directly or indirectly to him or her paid, undertake by any appliance, operation or treatment of whatever nature, to cure, heal or treat any bodily or mental ailment or supposed ailment of another; or who for any hire, gratuity or compensation, either directly or indirectly to him or her paid, by or for any patient, shall undertake to treat, heal, cure, drive away or remove any physical or mental ailment, or supposed ailment of another, by mental or other process, exercised or invoked on the part of either the healer or the patient or both; . . .'" *Hitchcock v. Collenberg*, 140 F. Supp. 894, 896.

The definition of naturopathy claims that "the practice of naturopathy shall not include the use of drugs, . . . or x-rays, except for diagnostic purposes." This poses the question: What is a drug? A similar question confronted the Court *In the Matter of Application of Rudolph H. Gerber for a Writ of Habeas Corpus*, 1922, 57 Cal. App. 141. The petitioner was a graduate from a school conducted by the Association of Naturopaths of California. The State Board of Examiners issued to the petitioner a certificate to the effect that he "has passed the required examination in all branches of Naturopathic Therapeutics and that The Board of Examiners herewith in consideration of the applicant's qualification and by the authority vested in us by the State of California confers upon Rudolph H. Gerber the degree of Doctor of Naturopathy with all the privileges, rights and advantages thereunto belonging." He had been convicted upon a charge of having violated that portion of section 1 of the Optometry Law (Stats. 1913,

p. 1097) providing that no persona shall engage in the practice of optometry without having first obtained a certificate of registration from the State Board of Optometry. But the provisions of section 10 of the Optometry Law provided that the Act shall not be construed "to prevent duly licensed physicians and surgeons from treating or fitting glasses to the human eye." The petitioner made the claim that as a licensed naturopath, he was a duly licensed physician and surgeon at the time of the commission of the acts which were the basis of the charge against him. The petition for the writ of habeas corpus was sustained. *Matter of Gerber*, 57 Cal. App. 141, 150.

The definition is extremely comprehensive. The Maryland Legislature had passed special regulations for the practice by other schools of the healing art where the definition of the scope of these schools was short, clear, simple and easy to understand, and moreover, unlike naturopathy, there was nothing in the curriculum of these schools which was contained in the curriculum of the allopathic and surgical schools. The Legislature of Maryland Prescribed special regulations for the practice of optometry, osteopathy, chiropody, chiropractic and physical therapy. The optometrist obtained his license from his own Board of Examiners; the osteopath from the Board of Esteopathic Examiners; a chiropodist from his Board, and a chiropractor from the State Board of Chiropractic Examiners. The cause for the distinction between these schools so regulated and the school of naturopathy is very simple. In *Hitchcock v. Collenberg*, the District Court said:

> "The special provisions . . . for the practice of optometry, osteopathy, chiropody, chiropractic and physical therapy limit *in every case* the type of treatment which the practitioner is authorized to administer; with respect to optometry and chiropody, the ills and diseased conditions may be treated *are strictly limited;* and physical therapists may treat under their license only patients diagnosed and

referred by licensed medical doctors. The Maryland legislature had the right to provide special regulations for these groups and to refuse to provide similar special regulations for naturopaths, *who undertake to treat any and all diseases in a wide variety of fashions.*"

Chiropractors do not "undertake to treat . . . diseases in a wide *variety of fashions.*" As defined by Nelson's Encyclopaedia, chiropractic is:

"A system of therapeutic treatment for various diseases, through the adjusting of articulations of the human body, particularly those of the spine, with the object of relieving pressure or tension upon nerve filaments. The operations are performed with the hands, no drugs being administered."

By the International Encyclopaedia:

"A system of manipulations which aims to cure disease by the mechanical restoration of displaced or subluxated bones, especially the vertebrae, to their normal relation. It is claimed that slight displacements of the spinal segments are frequent, that they constrict important nerves and arteries, and that chiropractic adjustment corrects the displacement and relieves the pressure."

Nationally, or even internationally, there is no controversy concerning the definition of "chiropractic." In the Standard Dictionary, it is defined as "A drugless method of treating disease chiefly by manipulation of the spinal column." In Vol. 11 of Corpus Juris, the following definition is given for "chiropractic": "A system of healing that treats disease by manipulation of the spinal column; the specific science that removes pressure on the nerves by the adjustment of the spinal vertebrae. There are no instruments used, the treatment being by hand only." In accord are *State v. Barnes*, 1922, 119 S.C. 213, 112 S.E. 62; *State v.*

Hopkins, 1917, 54 Mont. 52, 166 P. 304; *Commonwealth v. Zimmerman*, 1915, 221 Mass. 184, 108 N.E. 893; *State v. Gallagher*, 1912, 101 Ark. 593, 143 S.W. 98; *State v. Johnson*, 1911, 84 Kan. 411, 114 P. 390; *People v. Fowler*, 1938, 32 Cal. App. 2d Supp. 737, 84 P.2d 326; *People v. Mangiagli*, 1950, 218 P.2d (Cal.) 1025. Were the word "chiropractic" of unknown, ambiguous or doubtful meaning or the scope of this school of the healing art misunderstood, this might serve to provide a means of defining or fixing its signification, but in either the definition of the word or the scope of the therapy brook no such lack of clarity. Moreover, the scope of chiropractic being well known and thoroughly understood, chiropractic schools and colleges must stay within its boundries. Under the definition of naturopathy as presented to the Maryland legislature in 1955, quoted in *Hitchcock v. Collenberg*, 140 F. Supp. at 897, the naturopath might very well engage in a great variety of medical and surgical practice; indeed, it would be difficult to discover any sort of treatment of the sick or afflicted that could not, by a little ingenuity, be brought within it. There is no such danger with chiropractic and in the absence of such danger the legislature provided for chiropractors, a chiropractic Board of Examiners. Most of the items in the definition of naturopathy in the Maryland instance and taught in the naturopathic schools are on the curriculum of allopathy and even surgery. This is not so in the case of chiropractic. Students desiring to become chiropractors, in order to procure a degree must put in over 700 hours exclusively on chiropractic principles and technique. Neither the allopaths, osteopaths or surgeons, because of the lack of chiropractic principles or technique on their curriculum, are equipped with either the knowledge, or the experience to competently make a judgment on the competency of the chiropractic applicant. This is not so in the case of the naturopath. This is where the instant case is distinguished from *Hitchcock v. Collenberg*, 140 F. Supp. 894. To allow members of the school of allopathy to dominate and examine

applicants for a license for a school of which the allopaths know nothing is unreasonable and outside state police power jurisdiction.

At page 5 in the opinion of the District Court, that Court said:

> "The England case, supra, is ample authority for the proposition that laws prohibiting limited practitioners from practicing their arts unless they meet requirements laid down for other branches of the healing art which they assert to be different from their own do not violate due process. See also, *Collins v. Texas*, 223 U.S. 288 (1912) and *McNaughton v. Johnson*, 242 U.S. 344 (1917), and *Heaney v. Allen*, 299 F. Supp. 1300 (E. D. N.Y. 1969), aff'd., 425 F. 2d 869 (2d Cir., 1970)."

In the previous pages counsel has discussed the "*England* case, *supra*," and clearly shown that it has no relation to the case at bar. In *England* the chiropractors did not challenge the constitutionality of the Board or its composition, and its failure to include chiropractic representation on the Board. *England* conceded the jurisdiction of the Board. *England* did not ask for a license to practice chiropractic, but for a license equal to that of an allopath or surgeon. Judge Wisdom in his dissent made this very clear and he was ultimately sustained.

The District Court also relies on *McNaughton v. Johnson*, 242 U.S. 344 (1917). There was nothing substantial, constitutionally or otherwise, in the claims made by the complainants. The case was submitted to this Court with *Crane v. Johnson*, 242 U.S. 339. McNaughton called herself an opthalmologist, which she alleged "is a school of scientific learning and practice confined to the treatment of the inflammation of the eye and its membranes and in fitting glasses to the human eye." *McNaughton v. Johnson*, 242 U.S. at 346. California had enacted a statute which provided that it should be unlawful for any person

to engage in the practice of optometry without first having obtained a certificate of registration from the State Board of Optometry. The definition of optometry is practically identical with the definition of what the complainant called "opthalmologist." Optometry is defined to be "the employment of *any* means other than the use of drugs for the measurement of the powers or range of human vision or the determination of the accommodative and refractive states of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid thereof." 242 U.S. at 346. The case was merely a controversy over words which mean the same thing. Because the State of California in the statute called the practice optometry and the complainant called it opthalmology and herself an opthalmologist the complainant argued that she should come under that part of the statute where the legislature "provided that the act shall not be construed to prevent duly licensed physicians and surgeons from treating the human eye nor to prohibit the sale of complete ready-to-wear eyeglasses as merchandise from a permanent place of business in good faith and not in evasion of the act by any person not holding himself out as competent to examine and prescribe for the human eye." 242 U.S. at 347. The complainant had asked for a temporary and permanent injunction against enforcement of the statute as against her. There is nothing in the opinion of the Court as to whether McNaughton had been charged with a violation of the statute or that any criminal action was pending against her. The Court said in 242 U.S. at 349 that:

> "She is an opthalmologist, she avers, 'which is a school of scientific learning and practice confined to the treatment of the inflammation of the eye and its membranes and in fitting glasses to the human eye,' and that she practiced her profession for the past three years, and does not employ medicine, drugs or surgery. She, however, attacks the statute because, to

use the language of her counsel, it 'arbitrarily discriminates against every other school of scientific knowledge and practice in favor of the school employing drugs in determining the accommodative and refractive states of the human eye.' It undoubtedly does, but gives the name of the school that of 'optometry' and its practitioners 'optometrists.' *We cannot suppose that any injury is done her by the difference in names, and yet she gives no other tangible ground of complaint. Whether they are different and whether the difference is of substantial or unsubstantial degree she does not inform us.* She practices one of them in preference to the other, and for the practice of that one the State has declared that its certificate of competency is necessary. The cases cited above establish that the State has such power and it requires no more of complainant than it requires of any other opthalmogist, to use her word, or of any other optometrist, to use the word of the statute."

The district Court in the case at bar also relied on *New Jersey Chiropractic Association v. State Board of Medical Examiners*, 79 F. Supp. 327 (1948). In that case there was not, and could not be any complaint that the Board of Medical Examiners ignored chiropractors in its composition. Section 45:9-1 of the New Jersey Law provides that "The board shall consist of 11 full members and 2 qualified members who shall be persons of recognized professional ability and honor, and shall possess a license to practice his or her respective profession in New Jersey, and who shall be appointed by the Governor from a list to be furnished within 30 days after any vacancy occurs in the membership of the said board by the society or organization of whom the persons nominated are members, . . . or if such society or organization has a membership in good standing of not less than 100, and for every membership filled in said board at least 3 names shall be submitted to the Governor, and from the names thus

submitted the Governor shall select 1 person to be a member of said board; *provided, however, that said board shall consist of 9 graduates of schools of medicine who shall possess the degree of M.D., and in addition the membership of said board shall comprise 1 osteopath, 1 chiropractor, 1 qualified member who shall be a chiropodist and 1 qualified member who shall be a licensed bio-analytical laboratory, who may or may not be the holder of a degree of M.D. The qualified members of the board shall have equal rights and privileges with the other members of the board, but shall vote only on matters pertaining to their own specialties and shall have no vote on the* selection of officers." Then the statute, section 45:9-1 of the New Jersey Law continues concerning chiropractor representation as follows:

> "The Governor shall appoint 2 chiropractors who are licenses to practice chiropractic in the State of New Jersey to serve for a term of 3 years each and until their successors are appointed and qualify, who shall be available to assist the board in the administration of sections 4, 5, 6, 7, 8, 9, 12, 15 and 16 of chapter 233 of the Laws of 1953, which act supplements chapter 9 of Title 45 of the Revised Statutes, (section 45:9-1 et seq.), and contains this amendment to this section. . ."

Chiropractors were represented of the Board of Medical Examiners long before and at the time of the litigation in *New Jersey Chiropractic Association v. State Board of Medical Examiners*, 79 F. Supp. 330 (1948). See *State Board of Medical Examiners v. Grossman*, 134 N.J.L. 401 (1946). So it must be conceded that the main issues contained in the instant case have no relation to the issues in *New Jersey Chiropractic Ass'n v. State Board of Medical Examiners, supra.*

Another question brought up in the case of *New Jersey Chiropractic Association v. State Board of Medical Examiners*, supra, concerned the right to trial by jury when

charged with an offense under the law referred to. The Court said: (79 F. Supp. at 336-337)

> "Plaintiffs further contend that by virtue of the dedision in the case of *State Board of Medical Examiners v. Grossman, supra*, 135 N.J.L. 468, 52 A.2d 699, affirming sub nom., 134 N.J.L. 401, 48 A.2d 700), in interpreting the penalty clauses of the Medical Practice Act, N.J.S.A. 45:9-23, denying the right to trial by jury, the State of New Jersey has deprived them of their right to trial by jury under the United States Constitution. The cases cited by them in their briefs are inapplicable here. They concern themselves with the right to trial by jury in federal courts where federal statutes or rules of court are involved. On the contrary, where, as here, the right is invoked under a constitution or statute of a state, the rule in *Palko v. Connecticut*, 302 U.S. 319, at page 324, governs as it is therein stated in the following language:
>
> " 'The Sixth Amendment calls for a jury trial in criminal cases and the Seventh for a jury trial in civil cases at common law where the value in controversy shall exceed $20.00. This court has ruled that consistently with those amendments trial by jury may be modified by a state or abolished altogether (citing cases). Again the plaintiffs have failed to present a substantial federal question for consideration of the court because prior decisions of the United States Supreme Court have foreclosed this subject."

Had the plaintiffs in *New Jersey Chiropractic Association v. State Board of Medical Examiners*, 79 F. Supp. 330 not stopped in the middle of the stream and instead had carried the case all the way up to the Supreme Court the results might have been changed as in *Duncan v. Louisiana* (1968) 391 U.S. 947 and *Bloom v. Illinois* (1968), 391 U.S. 194 it was held that the Due Process Clause of the Fourteenth Amendment guarantees a right of jury trial in all

state criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment's guaranty of trial by jury. Moreover, in *Benton v. Maryland* (1969), 385 U.S. 784, *Palko v. Connecticut*, 302 U.S. 319 was overruled completely and the double jeopardy clause of the Fifth Amendment was made enforceable and applicable against the states. See, also, *North Carolina v. Pearce* (1969), 395 U.S. 711. Since in *New Jersey Chiropractic Ass'n v. Board*, 79 F. Supp. 330, had substantial representation on the Board, while in the case at bar there is no representation at all, the New Jersey case has no bearing here.

The District Court makes much of the fact that:

> "In addition to less stringent licensing requirements, Section 4731.17, Ohio Revised Code, requires the State Medical Board to:
>
> "'. . . call to its aid any person of established reputation and known ability in the particular limited branch in which the examination is being held.'
>
> "Thus in Ohio a chiropractor will assist the State Medical Board in examining other future chiropractors."

The undeniable fact is that all of the three defendants in this case have declared to destroy chiropractic, viz: the American Medical Association has declared by Resolution of its House of Delegates that chiropractic is an unscientific cult and a hazard to the health of the American people. (*Journal of American Medical Association*. Vol. 200, No. 3, April 17, 1967); that chiropractic in Ohio should be "put out of business." (Dr. Gerald D. Dorman, then president of the A.M.A., *Cleveland Press*, October 24, 1969); that chiropractic must be destroyed "by all means available until such times as its intent is accomplished." (Resolution of the House of Delegates of the Ohio State Medical Association. *The Blade*, Toledo, Ohio, May 15, 1970). Moreover, the members of the Ohio State Medical Board are also members of the American Medical Association and the Ohio State

Medical Association, and are bound by their Resolutions and policies. In these circumstances it does not require much to imagine the kind of a chiropractor that will be called in to aid in the intent to put chiropractic out of business, "by all means available." The suggestion that such a gimmick can substitute for chiropractic representation is an insult to the intelligence of any ordinary individual and even this Court.

The District Court also relied on *Heaney et al. v. Allen et al.*, 425 F.2d 869 (1970). The majority of the defendants in that case composed the State Board of Chiropractic Examiners. Section 6553, Article 132 of the New York Education Law provides for the organization of a State Board of Chiropractic Examiners, the members of which are at least four are chiropractors.

Section 6553, Article 132 provides as follows:

> Section 6553. *State board for chiropractors*
>
> A state board for chiropractic shall be appointed by the board of regents on recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing and professional conduct in accordance with section sixty-five hundred eight of this title. The board shall be composed of not less than seven members, including at least four licensed chiropractors, one licensed physician who is a doctor of medicine, one licensed physician who is a doctor of osteopathy, and one educator who holds a doctorate or equivalent degree in either anatomy, physiology, pathology, chemistry or microbiology. An executive secretary to the board shall be appointed by the board of regents on recommendation of the commissioner.

The issue involved stemmed from the fact that applicants for chiropractic licenses were required "to pass written examinations in clinical chiropractic analysis, X-ray as it relates to chiropractic analysis, and the practice of chiropractic, and a written examination in the following

basic subjects: anatomy, physiology, chemistry, hygiene, bacteriology, pathology, diagnosis and the use and effects of X-ray." *Heaney v. Allen*, 425 F.2d 869, 870. The Board of Chiropractic Examiners was to prepare and submit to the Department of Education questions for the examinations in clinical chiropractic analysis, the use and effects of X-ray, and the practice of chiropractic, and to examine and rate the papers on these subjects. The plaintiffs objected to the licensing provision as an abridgement of their "constitutional right to earn a living," and further contended that even if New York may impose appropriate restrictions on the practice of chiropractic, the restrictions of Article 132 are unreasonable and void because the "basic subjects" had no reasonable relation to the science of chiropractic and because the statute, rather than being a legitimate effort by New York to protect the health of its people, is a thinly disguised attempt to "kill" chiropractic, a conclusion they contended was confirmed by the preparation of the questions in the "basic subjects" by physicians. 425 F.2d at 870. The district court held that the question sought to be raised was not substantial under the second standard announced by the Supreme Court in *California Water Service Co. v. City of Redding*, 304 U.S. 252, 255 (1938).

It seems from the opinion in *Heaney v. Allen*, 425 F.2d at 870 that the identical question was already ruled by the Supreme Court and it was held to be unsubstantial. The Court of Appeals said through Judge Friendly that:

> "Here the foreclosure comes in the plainest way. This very statute was before the Supreme Court on appeal from a unanimous decision by the highest court of New York sustaining its constitutionality, *Wasmuth v. Allen*, 14 N.Y. 2d 391, 200 N.E. 2d 756, and the Court dismissed the appeal for want of a substantial federal question, 379 U.S. 11. Although plaintiffs say that in *Wasmuth* the sole constitutional attack was under the equal protection clause and not under the due process clause of the 14th Amendment, we find no

basis for this in the opinion of the New York Court of Appeals, 14 N.Y. 2d at 394, or in the jurisdictional statement in the Supreme Court. To the contrary the attack seems to have been on the precise grounds here urged, except for the point as to the use of questions in the 'basic subjects' prepared by physicians for applicants for a license in medicine, which seems unsubstantial and has been mooted for the future."

It is very difficult to understand why the District Court in the instant case could place any reliance on *Heaney v. Allen*, to dismiss this petition.

Briefly summerizing these cases relied on by the District Court to dismiss the complaint it is difficult to see where the cases have any application to the one at bar. What was actually before the Court in *Collins v. Texas*, 223 U.S. 288 (1912), was the interpretation of section 13 of the General Laws of Texas. Collins claimed that the definition of practicing medicine in the statute was arbitrary and irrational. He advanced no claim in his habeas corpus proceedings that the Board of Medical Examiners was unconstitutionally organized because his school was not represented on the Board, nor did he claim the members of the Board were incompetent to examine him on osteopathy. We cannot see where *Collins* can have any application to the case at bar. In *England v. Louisiana State Board of Medical Examiners*, 263 F.2d 661, Judge Wisdom dissenting. In that case there was no attack on the constitutionality of the composition of the members of the Board because chiropractors were ignored in forming it. The plaintiffs did not challenge the constitutionality of the Board but said it acted arbitrarily in refusing to issue them a license the same as that issued to the allopaths and surgeons under the Medical Practice Act. The claim was absurd. If chiropractors in Louisiana could acquire such a license, on the education procured in a chiropractic college instead of a medical college for allopaths and surgeons that would deny equal protection to such allopaths and surgeons. Judge

Wisdom's dissenting opinion which was finally sustained by the higher court, made this very clear. *Hitchcock v. Collenberg*, 140 F. Supp. 894, aff'd 353 U.S. 919 concerned naturopaths, not chiropractors. The chiropractors have their own board of examiners in Maryland. Consideration of the elaborate definition of naturopathy given by the naturopaths themselves compels the conclusion that the Maryland Board of Medical Examiners would be competent to examine naturopaths. *McNaughton v. Johnson*, 242 merely concerned the definition of the work "opthalmologist" as compared with the word "optometrist." Both words had the same definition. McNaughton gave no other ground for the complaint other than the difference in names, nor did she inform the court whether the difference was substantial or insubstantial. In *New Jersey Chiropractic Association v. State Board of Medical Examiners*, 79 F. Supp. 327, the opinion showed clearly that the chiropractors were represented on the Board. So the main issue contained in the instant case has no relation to the issues in *New Jersey Chiropractic Association v. State Board of Medical Examiners, supra.* In *Heaney v. Allen*, 425 F.2d 869 (1970), the record shows that the State of New York has provided a State Board of Chiropractic Examiners, the members of which are at least four chiropractors. The issue there stemmed from the fact that applicants for chiropractic licenses were required "to pass examinations in clinical chiropractic analysis, X-ray as it relates to chiropractic analysis, and the practice of chiropractic, and an examination in anatomy, physiology, chemistry, hygiene, bacteriology, pathology, diagnosis and the use and effect of X-ray." Since all of these subjects are contained in the curriculum of most chiropractic colleges it would seem that the requirement that the applicant be examined on them is not unreasonable.

Furthermore the two cases relied upon by the Court of Appeals (*Anderson v. Richardson*, 454 F.2d 596 and *Ex parte Poresky*, 290 U.S. 30) for its holding that "In determining the jurisdictional requirements for a three-judge

court were absent in this case . . . The District Court found the questions presented either foreclosed by prior decisions of the Supreme Court or patently without merit." (Page 2 of opinion of the Court of Appeals), are cases which have no application to the one at bar. As indicated above, and in the preceding summary of the cases relied upon by the District Court, none of the cases cited by that court have in fact foreclosed the constitutional questions presented and such questions are in fact substantial, involving the threat to survival of an entire healing profession and deprivation of its particular unique benefits to the public, by reason of denial of constitutionally protected rights.

The case of *Anderson v. Richardson* actually supports the case at bar. In that case the court actually held: ". . . the responsibility of a district judge in determining whether to request a three-judge court is narrow and by no means extends to consideration of the merits of the question presented . . ."

With respect to the second case cited by the Court of Appeals, *Ex parte Poresky*, inasmuch as the District Court in this case failed to cite any authority on prior decisions of the United States Supreme Court, or of any other court, for that matter, actually so deciding, on the issues and merits actually therein raised and considered therein, "as to foreclose the subject and leave no room for inference that the question sought to be raised can be the subject of controversy" (the criteria required by *Ex parte Poresky* to warrant the establishment in a three-judge court), the District Court in this case clearly acted contrary to law when it assumed to rule on the merits that: "the court determines that chapter 4137 of the Ohio Revised Code is constitutional" and that "because plaintiffs have not suffered any deprivation of a constitutional right arising from the Board's actions they have no cause of action under the civil rights statutes . . . plaintiffs have failed to state a claim upon which relief can be granted."

As shown above, under the statutes in question for establishing a three-judge court, it was not the statutory

function of the District Court to consider the merits of the questions presented, but the statutory function of the three-judge court, which the District Court signally erred in refusing to appoint as it was statutorily required to do in order that it, and not the District Court, should determine the merits of such questions.

3. Sherman Act Violation

Under the Sherman Act the threatened injury complained of must be to the plaintiffs' "business or property," and these terms are to be understood with their usual and ordinary connotations. "Business" includes not only a commercial or industrial enterprise or establishment, but also the employment or occupation or profession by which a person earns a living. The injury can also be when in restraint in trade, a projected business or professional endeavor is stifled at its inception or precluded from entering the market. It is just as unlawful to prevent a person from engaging in business as it is to drive him out of business. Judge Shauck put this very well in *State v. Gravett* (1901) 65 Ohio St. at 308, when he said:

> "By what process of reasoning could it be maintained that the right to enjoy property should be esteemed more sacred that the right to make contracts by which property might be acquired? . . . Our Constitutions are founded upon individualism and they make prominent the theory that to the individual should be granted all the rights consistent with public safety; and our development is chiefly attributable to the first establishment and maintenance of those rights by an authorized resort to courts for their protection against all hostile legislation which is not required by considerations of the public health or safety."

All courts unanimously agree that there is no more sacred right of citizenship than the right to pursue un-

molested a lawful employment in a lawful manner. It is nothing more nor less than the sacred right of labor. As the learned counsel for the Plaintiff in error in the *Slaughter-house Cases*, (1872) 16 Wall. 36, 21 L.Ed. 394 said in his argument to this Court it is ". . . the right to one's self, to one's own faculties, physical and intellectual, one's own brain, eyes, hands, feet, in a word to his sould and body, was an incontestable right; one of whose enjoyment and exercise by its owner no one could complain, and one which no one could take away. More than this, the obligation to labor was a duty, a thing ordained of God, and which if submitted to faithfully, secured a blessing to the human family." M. Thiers, *De la Propriété*, 36, 47. Or as Mr. Justice Bradley wrote in this same big case where justice was strangled in the worship of greed:

> "In my view, a law which prohibits a large class of citizens from adopting a lawful employment, or from following a lawful employment previously adopted, does deprive them of liberty as well as property, without due process of law. Their right of choice is a portion of their liberty; their occupation is their property. Such a law also deprives those citizens of the equal protection of the laws, contrary to the last clause (14th Amend.) of the section."

Chiropractors in Ohio are denied representation of the medical board which has complete domination over all schools of the healing art. Representation on the board is exclusively allowed to seven allopaths and one osteopath. As a result of the decision of the Ohio Supreme Court in *State v. Gravett* (1901) 65 Ohio St. 289, osteopaths were given representation on the board. The indictment had been dismissed on demurrer but the Attorney General appealed despite the fact that there was overwhelming precedent to the decision of the trial court. Because of this representation of the osteopaths on the board by one of their members, the osteopaths have equal rights with the allopaths. Osteopaths are examined by osteopaths com-

pletely. But because chiropractors have no representation on the board, the allopaths have complete control over the chiropractors. Because chiropractors have no representation on the board they are deliberately denied the rights accorded the allopaths. In this venture the allopaths are enabled to impose these denials because their powerful national and state associations, which are also defendents in this case, have sufficient power to influence unconstitutional legislation, particularly the defendant the American Medical Association. It posses sufficient economic power concentrated in the vehicle to invade the constitutional right of the individual to a material degree. See Berle, *Constitutional Limitations on Corporate Activity—Protection of Personal Rights From Invastion Through Economic Power* (1952), 100 Un. of Pa. 933-955; Warren, *Extent of Enterprise Monopoly in the United States*, 1999-1939 (1951); Stocking and Watkins, *Monopoly and Free Enterprise*, (1951); *Marsh v. Alabama*, 326 U.S. 501 (1946); Adelman, *Measurement of Industrial Concentration*, 33 Rev. of Econ. & Stat. (1951).

As one of the "means available" to "put chiropractic out of business" the members of the medical board go to extremes to prevent out-of-state chiropractors from coming to practice in Ohio. The first barricade set up to accomplish this "intent" is the denial of reciprocity to practicing out-of-state chiropractors. The osteopaths used to have the same difficulty until *State v. Gravett*, *supra*, was decided. In fact prior to the osteopaths being given representation on the board, this recognized school of the healing art was classified by the American Medical Association as another "unscientific cult." No chiropractor has ever received reciprocity in Ohio but this privilege is conferred on the allopaths and osteopaths in a wholesale manner. Even from the State of California alone, for example, in 1959 reciprocity was granted to 104 California osteopaths by the Ohio Medical Board. In 1960, 113 were allowed from California to practice by reciprocity; in 1961, 96 from California were given reciprocity; in 1962, 99; in 1963, 93

were allowed, and in 1964, 79 were allowed. These were exclusively from the State of California without counting those from any other state. The purpose of excluding the chiropractors from the reciprocity finds its source in the "intent" of the Resolutions of the Houses of Delegates of the American Medical Association and the Ohio State Medical Association. It is the function of the medical board, through its members, to carry out the policies of these two associations, and the avowed policy and "intent" of these resolutions is to "put chiropractic out of business." It requires no argument to convince this Court that any "person who, under color of any statute, ordinance, regulation, custom, or usage, of any State " which discriminates to the extent that permits some competent persons to engage in an occupation, but which prohibits other competent men from earning their livelihood in the same occupation, is unconstitutional. Section 1983, Title 42, U.S.C.; Constitution of United States, Amendment XIV; *Smith v. Texas*, 233 U.S. 630 (1914); *Blumenthal v. Board of Medical Examiners*, 57 Cal. 2d 228; *Pierce v. Society of Sisters*, 268 U.S. 510. Neither the Ohio Attorney General, or the attorneys for the other defendants claim that this discrimination in permitting wholesale reciprocity to allopaths and osteopaths who are represented on the Ohio Medical Board but denying it to the chiropractors who are not so represented has any reasonable relationship to the public health, safety, or welfare of the people of Ohio.

The District Court in its opinion at page 6 wrote: "The Court now addresses itself to plaintiffs' allegations in counts 9 and 10 that the reciprocity provisions of Sections 4731.18 and 4731.29 discriminate against citizens of other states desiring to move to Ohio and to practice their profession in Ohio. These allegations are patiently without merit." However, on the reciprocity discrimination the Court said nothing more but went into something else. It said: "To obtain a license as a limited practitioner in chiropractic or naprapathy, an Ohio resident is required to present a diploma from a school approved by the State Medical

Board and to pass an examination." The Court conveniently forgot to state that the in-state applicant *only required a high school education* preliminary to going to the chiropractic college. Then the Court said "In lieu of examination, the non-resident who has been licensed in another state may be licensed in Ohio *if he can show a minimum of two years collegiate work in an approved college of arts and sciences.* The Court again conveniently forgot that this two year collegiate work was not required of the in-state resident. It also forgot that the out-of-state chiropractor also required a to "*produce a diploma from a medical institution in the United States in good standing as defined by the board at the time the diploma was issued or produce a diploma from a school or college of osteopath in the United States in good standing at the time the diploma was issued. . .*" Section 4731.09, Ohio Revised Code. Section 4731.29 of the Revised Code refers to section 4731.18 which in turn, on the same item, refers to section 4731.09. Since the purpose of this discrimination has no other object than to keep out of Ohio chiropractors from other states in pursuance of the admitted scheme by the defendants to "put chiropractic out of business" by all means available until "the intent is accomplished," and since this phase of the conspiracy involves interstate commerce injunctive relief is provided by section 26, Title 15, U.S.C.

Before and after *Paul v. Virginia* (1869), 8 Wall. 168, 19 L. Ed. 357, this Court has held that Congress can regulate traffic though it consist of intangibles. *United States v. South Eastern Underwriters Association*, 322 U.S. 533, 546; *Gibbons v. Ogden*, 9 Wheat. (U.S.) 1, 6 L. Ed. 23; *Edwards v. California* (1941), 314 U.S. 160. In *Edwards*, speaking for the Court Mr. Justice Byrnes said at 172-173:

> "Article 1, section 8, of the Constitution delegates to the Congress the authority to regulate interstate commerce. And it is well settled beyond question that the transportation of persons is 'commerce,' within the meaning of that provision. It is nevertheless true that

the States are not wholly precluded from exercising their police power in matters of local concern though they may thereby affect interstate commerce."

Moreover, medicine is trade and comes within the purview of the Sherman Act. *American Medical Association v. United States*, 317 U.S. 519, 87 L. Ed. 434; *United States v. American Medical Association*, 110 F. 2d 703, cert. den. 310 U.S. 644. "Commerce is intercourse: one of its most ordinary ingredients is traffic." *Brown v. Maryland*, 12 Wheat. (U.S.) 419, 446, 6 L. Ed. 678, 688. "And although commerce includes traffic in this narrower sense, for more than a century it has been judicially recognized that in a broad sense it embraces every phase of commercial and business activity and intercourse." *Jordan v. Tashiro*, 278 U.S. 123, 127, 128. "The most widely accepted general description of that part of commerce which is subject to the federal power is that given in 1824 by Chief Justice Marshall in *Gibbons v. Ogden*, 9 Wheat. (U.S.) 1, 189 190 . "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. . . . No decision of this Court has ever questioned this as too comprehensive a description of the subject matter of the Commerce Clause. To accept a description less comprehensive, the Court has recognized, would deprive the Congress of that full power necessary to enable it to discharge its Constitutional duty to govern commerce among the states." *United States v. South-Eastern Underwriters Association*, 322 U.S. at 550-551. Unquestionably, the activities of the medical board in this case affects commerce.

4. Violations of Article IV, section 2, and Amendment XIV of the Constitution.

In *Edwards v. California*, 314 U.S. 160, the judgment was reversed on the ground that section 2615 of the California Welfare and Institutions Code was not a valid exercise of police power because it imposed an unconstitutional

burden upon interstate commerce. This Court, speaking through Mr. Justice Byrnes, took the view that it was unnecessary to decide whether the section was repugnant to other provisions of the Constitution. Mr. Justices Douglas, Black, Murphy and Jackson, while agreeing that the judgment should be reversed believed that the reversal should have been decided on the Fourteenth Amendment and other provisions of the Constitution such as Article IV, section 2. In cases like *Edwards*, and the one at bar which involve violations of the Sherman Act, Article IV, section 2 and the Fourteenth Amendment of the Constitution, and the violations all on the same set of facts, not the intermingling of confusing facts, this Court should not evade ruling on all three. Failure to do so immediately brings on more and even multiple litigation on the issues not ruled on. After citing Mr. Justice Moody in *Twining v. New Jersey*, 211 U.S. 78; Mr. Justice Miller in *Crandall v. Nevada*, 6 Wall. (U.S.) 35, 18 L. Ed. 745; Chief Justice Taney dissenting in the *Passenger* cases, 7 How. (U.S.) 283, 492, 12 L. Ed. 702, 790; Mr. Justice Fuller in *Williams v. Fears*, 179 U.S. 270, 274, 45 L. Ed. 186, 188 and several other cases, Mr. Justice Douglas, in *Edwards v. California*, 314 U.S. 160, 181 said:

> "The conclusion that the right of free movement is a right of *national* citizenship stands on firm historical ground. If a state tax on that movement, as in the Crandall Case, is invalid, a fortiori a state statute which obstructs or in substance prevents that movement must fall. . . But to allow such an exception to be engrafted on the rights of *national* citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government. . . It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity. The result would be a substantial dilution of the rights of national citizen-

ship a serious impairment of the principles of equality. Since the state statute here challenged involves such consequences, it runs afoul of the privileges and immunities clause of the Fourteenth Amendment."

Article IV, section 2, of the Constitution provides that:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Construing the purpose of this Article in the *Slaughter-house Cases* (1873), 16 Wall. 75, 21 L. Ed. 394, Mr. Justice Miller writing the prevailing opinion said that:

"Its sole purpose was to declare to the several states that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restriction on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."

This Court said in *Toomer v. Witsell* (1948), 334 U.S. 385, 395, 92 L. Ed. 1460, 1471 concerning this Clause that:

"The primary purpose of this clause . . . was to help fuse into one Nation a collection of independent, sovereign States. It was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizen of State B enjoy. For protection of such equality the citizen of State A was not to be restricted to the uncertain remedies afforded by diplomatic processes and official retaliation. Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which

now exists.' *Paul v. Virginia* (1868), 8 Wall. (U.S.) 168, 180, 19 L. Ed. 357, 369."

The rights, privileges and immunities referred to in sections 1983-1984, Title 42, U.S.C. embrace "*all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States. There is no indication in the language that the sweep of the section is confined to rights that are conferred or 'flow from' the Federal Government, as distinguished from those secured by the Constitution." *United States v. Price* (1966), 383 U.S., 787, 800. Moreover, these Civil Rights Statutes have application to the defendants in this suit, the American Medical Association and its member defendants, the Ohio State Medical Association and its member defendants, by their willfull participation "in joint activity with the State or its agents." *United States v. Price, supra.*

5. Pecuniary Interest In Conviction.

The Ohio State Medical Board has power under section 4731.39 of the Ohio Revised Code to bring prosecutions. Under section 4731.40 of the Ohio Revised Code, it has a vested pecuniary interest in conviction which makes the pursuit of a conviction a commercial venture. Section 4731.40 provides that "All fines collected for violation of sections 4731.41 to 4731.45, inclusive, of the Revised Code, shall be distributed as follows: *one half to the state medical board* and one half to the treasury of the county or municipal corporation in which the offense was committed." Undoubtedly, the secretary of the board, acting in behalf of the board under section 4731.39, is operating in a "quasi judicial capacity" in such cases as he must "file a complaint and prosecute the offender." It has been well settled "That officers acting in a judicial or *quasi judicial* capacity are disqualified by their interest in the controversy to be decided is of courst the general rule." *Tumey*

v. Ohio (1927), 273 U.S. 510; *Hulett v. Julian* (1966), 250 Fed. Supp. 208 (Three Judge Court); *Meyer v. Shields*, 61 F. 713. This, with the added vested interest of enforcing the policies of the American Medical Association and the Ohio State Medical Association in accomplishing the "intent" of their resolutions to destroy chiropractic merely aggravates the illegality. His job depends on his "good standing" with these associations and has been made a qualification by statute and to retain this "good standing" the secretary must use all the means available to him as secretary of the board until the "intent" of these resolutions is "accomplished."

In *Tumey v. Ohio*, 273 U.S. 510, this Court twice emphasized that its decision was not confined to the judge deciding the case, but also to "quasi judicial" officers. This emphasis was no doubt inspired by the fact that the Ohio statutes challenged also authorized that deputy marshals were also allowed "an amount of money equal to 15 per cent of the fine collected," as were detectives and secret officers. According to Black's Law Dictionary, Fourth Edition, p. 1441, quasi judicial is "A term applied to the action, discretion, etc., of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature."

A quasi judicial act is a judicial act performed by one not a judge. *State Tax Commission of Utah v. Katsis*, 90 Utah 406, 62 P.2d 120, 123; *Thompson Products v. National Labor Relations Board*, 133 F.2d 637, 640. The Ohio State Medical Board fits into this category. As pointed out above, the vice was not exclusively applicable to a judge and the Supreme Court clearly pointed out that under the common law, the slightest pecuniary interest of any officer, judicial or resolving the subject matter which he was to decide rendered the decision voidable. It is only reasonable that any procedure which offers a possible temption to the average man as judicial or quasi-judicial

to forget the burden of proof required under the doctrine of reasonable doubt required to convict a defendant, or which might lead such quasi-judicial officer not to hold the balance, nice, clear and true between the State and the accused, denied the latter due process of law. *Tumey v. Ohio, supra.* See also *Roberts v. Noel*, 296 S.W. 2d 745 (Ky. 1956); Vanlandingham, *The Aftermath of Tumey v. Ohio*, 45 Ky. L. Jour. 607 (1957); *Williams v. Brannen*, 116 W. Va. 1, 178 S.E. 67 (1935). Discussing the common law available on the subject this Court in *Tumey v. Ohio*, 273 U.S. 510 said:

> "Indeed in analogous cases it is very clear that the slightest pecuniary interest of *any* officer, judicial or quasi-judicial, in resolving of the subject matter which he was to decide, rendered the decision voidable. *Bonham's Case*, 8 Coke 118a, 77 Eng. Reprint, 652; *London v. Wood*, 12 Mod. 669, 687, 88 Eng. Reprint, 1592; *Day v. Savadge*, Hobart, 85, 87, 80 Eng. Reprint, 235; *Hesketh v. Braddock*, 3 Burr. 1847, 1856-1858, 97 Eng. Reprint, 1130."

6. Rules of Civil Procedure.

The District Court was bound to construe the pleadings before it as to do substantial justice. Rule 8 (f), Rules of Civil Procedure; *Francis O. Day Co. v. Shapiro*, 267 F.2d 669, and the pleadings must be judged by their substance and not their form. *United States v. White County Bridge Commission*, 275 F.2d 529; *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500. Moreover, especially when an issue is raised in a pleading as to any violation of the Sherman or Civil Rights Acts, dismissal on motion, courts are admonished, should be "sparingly practiced." *Poller v. Columbia Broadcasting System, Inc.*, 368 U.S. 464, 473 (1962). Disposition on motion is not warranted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to

relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Bolick-Gillman Co. v. Continental Baking Co.*, 278 F.2d 649 (1960); *Congress Building Corp. v. Loew's, Inc.*, 246 F.2d 587 (1957); *South Carolina Council of Milk Producers, Inc. v. Newton*, 360 F.2d 414, 419-410 (1966).

CONCLUSION

The Writ of Certiorari should be granted as the questions involved are substantial.

FRANK O. WALTHER
Attorney for Petitioners

124 Booth Lane
Haverford, Pennsylvania 19041
Telephone: (215) MI9-0542

Of Counsel for Petitioners:
JON M. COPE

71 East State Street
Columbus, Ohio
Telephone: 228-6148

R. E. W.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1971
No. ———

DR. SID E. WILLIAMS, *et al.*,
Petitioners

v.

DR. WALTER C. BORNEMEIER, *et al.*,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 1972, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid to each of the following: William J. Brown, Attorney General of Ohio, and I. B. Marks, Assistant Attorney General, State House Annex, Columbus, Ohio, and James E. Pohlman, 37 West Broad Street, Columbus, Ohio, 43215, all attorneys for respondents. I further certify that all parties required to be served have been served.



FRANK O. WALTHER
Attorney for Petitioners

124 Booth Lane
Haverford, Pennsylvania 19041
Telephone: (215) MI9-0542

APPENDIX

OPINION AND ORDER OF DISTRICT COURT AND OPINION

This matter is before the Court on the motion of all defendants to dismiss the amended complaint filed in this action on September 16, 1971. This amended complaint supersedes the original complaint filed in this action on April 23, 1971 in its entirety, except for the prayer which the amended complaint specifically adopts by reference to the original complaint.

Plaintiffs allege (1) a conspiracy to force chiropractors and other "drugless physicians of the healing art" out of business in violation of Title 42, United States Code, Sections 1983 and 1985(3), (2) that Chapter 4731 of the Ohio Revised Code is unconstitutional and (3) violation of Sections 1-7 of the Sherman Anti-Trust Act, Title 15, United States Code, Sections 1-7.

Plaintiffs have prayed for (1) the convening of a three judge court, (2) preliminary and permanent injunctions against further enforcement of Chapter 4137, Ohio Revised Code and (3) an injunction against further acts of conspiracy and against further restraints on the practice of chiropractors and other "drugless physicians of the healing art."

The Ohio State Medical Association (OSMA) and its officers have moved to dismiss under the provisions of Rule 12(b)(6) and under the provisions of Rule 41(b), Federal Rules of Civil Procedure for failure to comply with Rule 8(a) and (e).

Defendant American Medical Association (AMA) and its officers have moved to dismiss under the provisions of Rule 12(b)(2), (3), (5) and (6) and under the provisions of Rule 41(b) for failure to comply with Rules 8(a) and (e).

Defendant Ohio State Medical Board (OSMB) and its members as individuals have moved to dismiss under

the provisions of Rule 12(b)(1) and (6) and under the provisions of Rule 41(b) for failure to comply with Rule 8(a) and (e).

Initially the Court notes that plaintiffs' amended complaint fails to comply with Rule 8(a) in that it contains no jurisdictional statement. Counsel for the plaintiff is advised to refer to Form 2, Appendix of Forms, Federal Rules of Civil Procedure for examples of proper jurisdictional statements.

In addition, the Court notes that the amended complaint represents plaintiffs' third attempt to properly draft a complaint. The case of *Hall v. Ohio State Medical Board*, Civ. No. 69-280 (S.D. Ohio E.D. 1970) was dismissed by a three judge court for failure to comply with rule 8(a). Plaintiffs' amended complaint in twenty pages and thirteen counts represents counsel's best attempt at a short and plain statement of the claim. The basis for the Court's jurisdiction and the basis of the claim emerge with sufficient clarity to enable the Court to determine that plaintiffs are not entitled to relief. Jurisdiction lies under the provisions of 28 U.S.C. 1343(3), 2281, and 15 U.S.C. 4.

I

The Request For a Three Judge Court

Counts four through thirteen of the amended complaint challenge the constitutionality of Chapter 4731, Ohio Revised Code, as it is applied to chiropractors and other limited practitioners of the healing arts. Chapter 4731 provides for the examination, licensing and regulation of physicians and limited practitioners of the healing arts. The chapter also sets out the duties and composition of the Ohio State Medical Board.

In counts 4, 5, 6, 7, 8, 11, 12 and 13, plaintiffs allege that the composition of the OSMB operates to deprive them of due process and equal protection because chiropractors or naprapaths are not represented on the

Board though they are examined and regulated by the Board and the Board determines which chiropractic and naprapathic schools are accredited for licensing purposes.

These allegations do not require determination by a three judge court. A substantial constitutional question is necessary before a three judge court may be convened. *Jones v. Branigan*, 433 F.2d 576 (6th Cir., 1970). A question may be unsubstantial either because it is obviously without merit or because its unsoundness so clearly results from previous decisions as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy. *Ex parte Poresky*, 290 U.S. 30 (1933).

Each of the constitutional arguments made by the plaintiffs have been presented before and have been the subject of decisions in the United States Supreme Court.

A statute creating a board to be composed of members from a particular school of medicine is not unconstitutional. See, 70 C.J.S. *Physicians & Surgeons*, §13 and *Hitchcock v. Collenberg*, 140 F. Supp. 894, 900 (D. Md. 1956), aff'd. 353 U.S. 919, in which the Court held that the Maryland Medical Practice Act did not deprive plaintiffs of equal protection because one desiring to practice naturopathy was not allowed to do so without obtaining a license from a medical board composed of medical competitors of naturopaths.

All arguments raised by the plaintiffs here have been considered by lower federal courts and ruled on by the United States Supreme Court in the titanic battle between a chiropractor named Jerry England and the Louisiana State Board of Medical Examiners. A review of the various Supreme Court decisions appears in *England v. Louisiana State Board of Medical Examiners*, 263 F.2d 661, 666 (5th Cir. 1959), *cert. den.*, 359 U.S. 1012 (1959).

The policy of the Supreme Court has been, and continues to be, to review with reluctance and self restraint state regulations in the medical field. When, after

a prolonged procedural battle, the federal courts finally reviewed the Louisiana Medical Practice Act they upheld the legislation. *England v. Louisiana State Board of Medical Examiners*, 246 F. Supp. 993 (1965), *aff'd.*, 384 U.S. 885 (1966), *rehearing den.*, 385 U.S. 890 (1966).

Before legislation regulating medical practice can be found unconstitutional, plaintiffs would have to show that the regulations are without a rational basis. The Ohio statute is in all respects more lenient than Louisiana statutes held to be constitutional, which required chiropractors to pass examinations given in Anatomy, Physiology, Chemistry, Physical Diagnosis, Pathology and Bacteriology, Hygiene, Surgery, Theory and Practice of Medicine, Materia Medica, Obstetrics and Gynecology.

The *England* case, *supra*, is ample authority for the proposition that laws prohibiting limited practitioners from practicing their arts unless they meet requirements laid down for other branches of the healing art which they assert to be different from their own do not violate due process. See also, *Collins v. Texas*, 223 U.S. 288 (1912) and *McNaughton v. Johnson*, 242 U.S. 344 (1917), and *Heaney v. Allen*, 299 F. Supp. 1300 (E.D. N.Y. 1969), *aff'd.*, 425 F.2d 869 (2d Cir., 1970).

In addition to less stringent licensing requirements, Section 4731.17, Ohio Revised Code, requires the State Medical Board to:

> . . . call to its aid any person of established reputation and known ability in the particular limited branch in which the examination is being held.

Thus, in Ohio a chiropractor will assist the State Medical Board in examining other future chiropractors.

Delegation of power to the State Medical Board to determine fitness to practice and the standing of schools offering instruction in napropathy and chiropractic violates no constitutional rights. See, *New Jersey Chiropractic Association v. State Board of Medical Examiners*, 79 F. Supp. 327, 337 (D. N.J. 1948) and cases cited therein.

The Court reiterates that plaintiffs are not deprived of any constitutional rights solely because of the composition of the Ohio State Medical Board. The requirement that the Board consist of seven members holding an M.D. degree and one person holding a D.O. degree is not so irrational or unreasonable as to be beyond constitutional bounds.

The Court now addresses itself to plaintiffs' allegations in counts 9 and 10 that the reciprocity provisions of Sections 4731.18 and 4731.29 discriminate against citizens of other states desiring to move to Ohio and to practice their profession in Ohio. These allegations are patently without merit. To obtain a license as a limited practitioner in chiropractic or naprapathy, an Ohio resident is required to present a diploma from a school approved by the State Medical Board and to pass an examination.

In lieu of examination, the non-resident who has been licensed in another state may be licensed in Ohio if he can show a minimum of two years collegiate work in an approved college of arts and sciences. As the Court intimated in *O'Dell v. State Medical Board*, 259 N.E. 2d 167 (C.P. Clermont, Ohio, 1970), there is no reason why the non-resident, upon moving to Ohio, could not apply as a resident and be given the same rights as any other resident if he did not have the requisite two years of college training.

It is apparent that the statutory scheme actually works to the advantage of previously licensed practitioners who move into Ohio, because they have two ways in which they can obtain a license. They can avoid the examination which is required of all Ohio residents before they begin to practice. Consequently, the reciprocity provisions of Chapter 4731 do not deny plaintiffs any privileges or immunities guaranteed by the Fourteenth Amendment.

Based on the foregoing discussion and the authorities cited, the Court determines that the complaint

advances no claim sufficiently substantial to sustain the request for a three judge court. *Heaney v. Allen*, 425 F.2d 869 (2d Cir., 1970).

WHEREUPON, the Court determines that plaintiffs' request for a three judge court is without merit and it is therefore DENIED.

II

The Motions to Dismiss

The Court now addresses itself to defendants' motions to dismiss for failure to state a claim upon which relief can be granted.

On the basis of the authorities cited in Part I of this opinion, the Court determines that Chapter 4137 of the Ohio Revised Code is constitutional and that counts four through thirteen of the amended complaint fail to state a claim upon which relief can be granted.

In counts 1, 2 and 3 of the amended complaint plaintiffs allege a conspiracy to put chiropractors out of business in violation of Title 42, United States Code, Sections 1983 and 1985(3).

In order to state a claim under 42 U.S.C. §1983, a plaintiff must establish two essential elements:

1. The conduct complained of must be done by some person acting under color of State or local law; and
2. The conduct must deprive the plaintiff of rights, privileges or immunities secured to him by the Constitution.

Curry v. Landy, 314 F. Supp. 344 (E.D. Pa., 1970).

Plaintiffs fail to allege any specific acts of the Ohio State Medical Board or its officers in derrogation of plaintiffs' rights. It appears from the context of the entire amended complaint that the Ohio State Medical Board

and the individual officers are named as defendants solely because of the fact that they enforce the provisions of Chapter 4731. Having determined that the provisions of that chapter are constitutional, the enforcement of those provisions violates no constitutional rights and no cause of action is stated under the civil rights statutes, 42 U.S.C. 1981, et seq.

The allegations of conspiracy to drive plaintiffs out of business between the AMA and the Ohio State Medical Association also fails to state a claim under the Civil Rights Acts, 42 U.S.C. 1981 et seq. because those defendants are not acting under color of law. In this case only the Ohio State Medical Board could be considered a state agent. Because plaintiffs have not suffered any deprivation of a constitutional right arising from the Board's actions they have no cause of action under the civil rights statutes. *Rutherford v. American Medical Association*, 379 F.2d 641 (7th Cir., 1967), *cert. den.*, 389 U.S. 1043 (1968), *rehearing den.* 309 U.S. 975 (1968).

It appears from plaintiffs' memorandum contra the motion to dismiss that plaintiffs base their allegations against the AMA and OSMA on certain public utterances of those organizations. Even assuming that those published statements were actionable, Section 1985(3) does not create a general federal tort law. See, *Griffin v. Breckenridge*, 403 U.S. 88 (1971).

Finally, the Court looks at Count 10 of the amended complaint in which it is alleged that the provisions of Chapter 4731 of the Ohio Revised Code violate the Sherman Anti-Trust Act. That question is controlled by the holding in *Parker v. Brown*, 317 U.S. 341, 350 (1943). The anti-trust laws deal with individual activity and not with state activity. See also, *Stuart v. Wilson*, 211 F. Supp. 700 (N.D. Texas 1962) *aff'd.* 371 U.S. 576 (1963); and *Hitchcock v. Collenberg*, *supra*.

Upon consideration and in accordance with the above opinion, the Court determines that plaintiffs have failed to state a claim upon which relief can be

granted. The Court holds that the motions of all defendants are meritorious and they are therefore GRANTED.

This action is hereby DISMISSED.



UNITED STATES DISTRICT JUDGE

OPINION

PREVIOUS ORDER OF SAME JUDGE GRANTING PETITION FOR THREE JUDGE COURT

OPINION AND ORDER

This matter is before the Court on the application of the plaintiffs to convene a Three Judge Court pursuant to Title 28, United States Code, Sections 2281 and 2284 and to allow this cause to proceed as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Plaintiffs have filed a complaint which seeks declaratory and injunctive relief and which attacks the constitutionality of the provisions of the Ohio Revised Code which relate to the organization and powers of the Ohio State Medical Board (# #4731.01, 4731.02, 4731.15, 4731.39, 4731.40, 4731.41 and 4731.34, Ohio Revised Code). It is alleged that these statutes deny the plaintiffs and others similarly situated certain civil and constitutional rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

Such a case must be heard by a Three Judge Court in compliance with Title 28, United States Code, Sections 2281 and 2284, unless the constitutional issue raised is "plainly insubstantial," *Idlewild Bon Voyage Liquor Corp. v. Epstein*, 370 U.S. 713 (1962); *King v. Smith*, 392 U.S. 309 (1968). The constitutional challenge made herein is substantial. See *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964).

The prerequisites for the convening of a Three Judge District Court are present in this suit.

WHEREUPON, the Court declares it will notify the Chief Judge of the Sixth Circuit that in its opinion a Three Judge District Court is required in this case.

FURTHER, in accordance with Rule 23(c) (1) of the Federal Rules of Civil Procedure, the Court has considered the propriety of the maintenance of this suit as a class action. The Court finds that, (1) the class herein consists of all chiropractors and naprapaths in the State of Ohio, (2) the class is too numerous to make it practicable to bring them all before the Court, (3) common questions of law and fact exist as to all members of the class, and, (4) plaintiffs will fairly and adequately represent the class. The Court finds further that the class action herein should be maintained under Rule 23(b) (2), Fed. R. Civ. P.

WHEREUPON, the Court ORDERS that pursuant to Rules 23(a), (b) (2) and (d) (2), Fed. R. Civ. P., this suit for declaratory and injunctive relief may be maintained as a class action. The class shall consist of all chiropractors and naprapaths in the State of Ohio.



UNITED STATES DISTRICT JUDGE

ORDER DISMISSING APPEAL

No. 72-1162

Before: EDWARDS, PECK and MILLER, Circuit Judges.

This motion seeks to affirm the judgment of the United States District Court for the Southern District of Ohio declining to convene a three-judge district court and dismissing the cause of action for failure to state a claim upon which relief can be granted. The motion is on the ground that the questions on appeal are "so unsubstantial as not to need further argument." Rule 8(b), Rules of the Sixth Circuit.

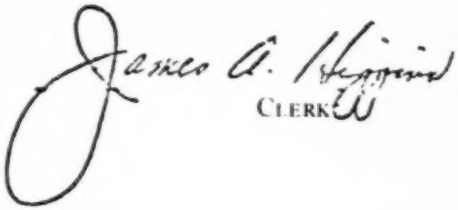
The plaintiffs-appellants are chiropractors and essentially their complaint attacks the constitutionality of the Ohio state medical act, Chapter 4731, Ohio Revised Code. A three-judge court previously dismissed a prior complaint for failure to comply with Rule 8(a), specifically, a failure to submit "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(a) Fed. R. Civ. P. *Hall v. Ohio State Medical Board*, Civ. No. 69-280 (S.D. Ohio, E.D. 1970).

In determining that the jurisdictional requirements for a three-judge court were absent in this case, the court below assessed the substantiality of the constitutional issues presented in the complaint. *Anderson v. Richardson*, Secretary of HEW, No. 71-1317, (6th Cir. Jan. 31, 1972). The district court found the questions presented either foreclosed by prior decisions of the Supreme Court or patently without merit. *Ex Parte Poresky*, 290 U.S. 30 (1933). In determining that the complaint failed to state a claim upon which relief can be granted, the district court found the claims legally deficient.

Upon consideration, this Court finds the conclusions of the district court to be correct and fully supported by the authorities cited in that court's opinion and order. Accordingly,

It is ORDERED that the motion to affirm be, and it is hereby granted.

ENTERED BY ORDER OF THE COURT.



CLERK

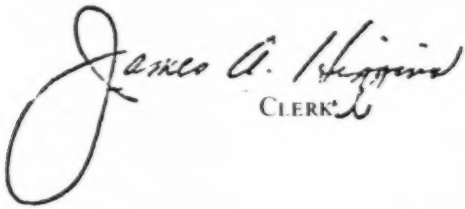
ORDER DENYING REHEARING

Before: EDWARDS, PECK and MILLER, Circuit Judges.

The Court has fully considered the petition for a rehearing filed on behalf of the plaintiffs-appellants on April 26, 1972, and is of the opinion that the petition is without merit.

It is therefore ORDERED that the said petition for a rehearing be and the same is hereby denied.

ENTERED BY ORDER OF THE COURT.



CLERK

CONSTITUTION OF THE UNITED STATES

Article One, Section 8

Section 8. The Congress shall have Power

(3) To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

Article Four, Section 2

Section 2. The citizens of each State shall be entitled to all privileges and immunities of Citizens in the several States.

AMENDMENT 5

[Criminal actions—Provisions concerning—Due process of law and just compensation clauses.] —No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 14

Section 1. [Citizenship—Due process of law—Equal protection.]—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws.

UNITED STATES CODE

Title 15
Commerce and Trade

§26. Injunctive relief for private parties; exception

Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including section 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: Provided, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. Oct. 15, 1914, c. 323, §16, 38 Stat. 737.

Title 28
Judiciary and Judicial Procedure

§1343. Civil rights and elective franchise

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote. June 25, 1948, c. 646, 62 Stat. 932; Sept. 3, 1954, c. 1263, §42, 68 Stat. 1241; Sept. 9, 1957, Pub.L. 85—315, Part III, §121, 71 Stat. 637.

CHAPTER 155.—INJUNCTIONS—THREE-JUDGE COURTS

Section

2281. Injunction against enforcement of State statute—Three-judge court required.

2282. Injunction against enforcement of Federal statute—Three-judge court required.

2283. Stay of State court proceedings.

2284. Three-judge district court—Composition—Procedure.

Section 2281. Injunction against enforcement of State statute—Three-judge court required.—An interlocutory or permanent injunction restraining

the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title. (June 25, 1948, c. 646, §1, 62 Stat. 968).

2282. Injunction against enforcement of Federal statute—Three-judge court required.—An interlocutory or permanent injunction restraining the enforcement, operation or execution of any Act of Congress for repugnance to the Constitution of the United States shall not be granted by any district court or judge thereof unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title.

2283. Stay of State court proceedings.—A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. (June 25, 1948, c. 646, §1, 62 Stat. 968.)

TITLE 28

§2284. Three-judge district court; composition; procedure

In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

(1) The district judge to whom the application for injunction or other relief is presented shall constitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof.

(3) In any such case in which an application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the

trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or motion to vacate the same, or dismiss the action, or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State. June 25, 1948, c. 646, 62 Stat. 968; June 11, 1960, Pub.L. 86—507, §1(19), 74 Stat. 201.

TITLE 42, CIVIL RIGHTS

§1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equtiy, or other proper proceeding for redress.
R.S. §1979.

§1984. Same; review of proceedings

OR COPY

All cases arising under the provisions of this Act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court.
Mar. 1, 1875, c. 114, §5, 18 Stat. 337.

§1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties.

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended, or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, ob-

structing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State of Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

SUPREME COURT OF THE UNITED STATES

No. A-35

SID E. WILLIAMS, *et al.*,

Petitioners

v.

WALTER C. BORNEMEIER, *et al.*

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including September 15, 1972.

BYRON R. WHITE
Associate Justice of the Supreme Court of the United States

Dated this 10th day of July, 1972.

COPY

Supreme Court, U. S.
FILED
OCT 14 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-441

DR. SID E. WILLIAMS, et al.,

Petitioners,

vs.

DR. WALTER C. BORNEMEIER, et al.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM OPPOSING CERTIORARI

SUBMITTED ON BEHALF OF
RESPONDENT
OHIO STATE MEDICAL BOARD

WILLIAM J. BROWN
Attorney General,

CHARLES T. COLLETT
Assistant Attorney General
57 East Gay Street
Columbus, Ohio 43215
(614) 469-6609

Counsel for Respondent

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-441

DR. SID E. WILLIAMS, et al.

Petitioners,

vs.

DR. WALTER C. BORNEMEIER, et al.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S MEMORANDUM OPPOSING CERTIORARI

MEMORANDUM OPPOSING CERTIORARI

Petitioners, chiropractors not licensed by this Respondent, attack the constitutionality of the Ohio Medical Practices Act, Ohio Revised Code, Chapter 4731. This is their primary claim, which the court below, the Sixth Circuit Court of Appeals, noted. Ancillary to and in conjunction with this are claims which allege that this Respondent has acted in conspiracy with Respondents, American Medical Association and Ohio State Medical Association, to violate Petitioner's rights under federal civil rights and antitrust statutes.

In this case the District Court for the Southern District of Ohio declined to convene a three-judge court and dismissed the action for failure to state a claim upon which relief could be granted. The Court of Appeals affirmed and noted that the District Court had "assessed the substantiality of the constitutional issues presented . . . [and] found [such] either foreclosed by prior decisions of the Supreme Court or patently without merit."

Further, within the past year this Court has had before it three petitions for certiorari which made the same constitutional attacks upon the Ohio Medical Practices Act, which involved two of the petitioners of the instant case (Frank S. Ream and Carson O'Dell), and which were prepared by the same attorney as present. *O'Dell v. Ohio State Medical Board,* No. 71-5682; *Ream v. Ohio,* No. 71-1087; *Ream v. Ohio,* No. 70-5259. Certiorari was denied in each case. *O'Dell v. Ohio State Medical Board,* —U.S.—, 31 L.Ed.2d 798 (1972); *Ream v. Ohio,* —U.S.—, 32 L.Ed.2d 116 (1972); *Ream v. Ohio,* —U.S.—, 30 L. Ed.2d 76 (1972). The claims raised by Petitioners regarding the federal civil rights and antitrust statutes were also raised in one or more of the just named cases.

Reasons for denying the petition for a writ of certiorari are fully set forth in the opinions of the District Court for the Southern District of Ohio and the Sixth Circuit Court of Appeals, as yet unreported but contained in the Appendix to Petitioners' brief at pages 61 and 71 respectively.

THEREFORE, the petition for certiorari should be denied.

Respectfully submitted,

WILLIAM J. BROWN
Attorney General
State of Ohio

CHARLES T. COLLETT
Assistant Attorney General
57 East Gay Street
Columbus, Ohio 43215
(614) 469-8609

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 1972, three copies of the Memorandum Opposing Certiorari were mailed, postage prepaid to, Frank O. Walther, Esq., 124 Booth Lane, Haverford, Pennsylvania, Counsel for the Petitioners and Tom O. Morgan, attorney in *pro per,* Highway 45 South, Verona, Mississippi. I further certify that all parties required to be served have been served.

CHARLES T. COLLETT
Assistant Attorney General
57 East Gay Street
Columbus, Ohio 43215
(614) 469-8609

IN THE

Supreme Court of The United States

OCTOBER TERM 1972

No. 72-441

DR. SID E. WILLIAMS, ET AL.,
Petitioners,

vs.

DR. WALTER C. BORNEMEIER, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM OF RESPONDENTS, AMERICAN MEDICAL ASSOCIATION AND ITS NAMED OFFICERS AND OHIO STATE MEDICAL ASSOCIATION AND ITS NAMED OFFICERS, OPPOSING CERTIORARI

The petitioners in this case are chiropractors whose essential claim, as noted by the court below (the United States Court of Appeals for the Sixth Circuit), is an attack upon the constitutionality of the Ohio Medical Practice Act, Ohio Revised Code Chapter 4731. A subsidiary claim of petitioners is that respondents American Medical Association and Ohio State Medical Association have acted in conspiracy with respondent Ohio State Medical Board to violate petitioners' rights under federal civil rights and antitrust statutes.

The court below affirmed the judgment of the United States District Court for the Southern District of Ohio

declining to convene a three-judge court and dismissing the case for failure to state a claim upon which relief can be granted. The court below noted in its opinion that the District Court "assessed the substantiality of the constitutional issues presented . . . [and] found [them] either foreclosed by prior decisions of the Supreme Court or patently without merit."

Moreover, this Court has had before it on three occasions within the past twelve (12) months petitions for certiorari filed on behalf of two of the petitioners in the case at bar, Frank J. Ream and Carson S. O'Dell, in which the same constitutional attacks upon the Ohio Medical Practice Act were made. *Ream v. Ohio,* No. 70-5259; *O'Dell v. Ohio State Medical Board,* No. 71-5682; *Ream v. Ohio,* No. 71-1087. Counsel for the petitioners in the case at bar also represented Mr. Ream and Mr. O'Dell in their cases before this Court. In each of these cases the petition for certiorari was denied. *Ream v. Ohio,* cert. denied, ____ U.S. ____, 30 L. Ed. 2d 76 (October 12, 1971); *O'Dell v. Ohio Medical Board,* cert. denied, ____ U.S. ____, 31 L. Ed. 2d 798 (April 17, 1972); *Ream v. Ohio,* cert. denied, ____ U.S. ____, 32 L. Ed. 2d 116 (May 15, 1972).

With respect to the subsidiary questions raised by petitioners concerning the federal civil rights and anti-trust statutes, these same questions were also raised in one or more of the three cases noted above in which certiorari was denied.

Lastly, the opinions of the United States District Court for the Southern District of Ohio and of the United States Court of Appeals for the Sixth Circuit, which are unreported but are contained in the Appendix to petitioners' brief at pages 61 and 71 respectively, amply set forth and discuss the applicable authorities

for denying the petition for a writ of certiorari.

THEREFORE, the petition for certiorari should be denied.

Respectfully submitted,
EARL F. MORRIS,
JAMES E. POHLMAN,
37 West Broad Street,
Columbus, Ohio 43215,
Counsel for Respondents

October 12, 1972